

# **EXHIBIT 25**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

NATIONWIDE LIFE INSURANCE COMPANY,  
a foreign corporation,

Plaintiff,

vs. Case No. 11-cv-12422-AC-MKM

Hon. Avern Cohn

WILLIAM KEENE, JENNIFER KEENE, MONICA  
LYNNE LUPILOFF, NICOLE RENEE LUPILOFF  
and NICOLE RENEE LUPILOFF, PERSONAL  
REPRESENTATIVE OF THE ESTATE OF GARY  
LUPILOFF, DECEASED,

Defendants,

and

MONICA LYNN LUPILOFF, NICOLE RENEE  
LUPILOFF and NICOLE RENEE LUPILOFF,  
PERSONAL REPRESENTATIVE OF THE ESTATE  
OF GARY LUPILOFF, DECEASED,

Defendants/Counter-Plaintiffs

and Cross-Plaintiffs,

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

NICOLE RENEE LUPILOFF, PERSONAL

REPRESENTATIVE OF THE ESTATE OF

GARY LUPILOFF, DECEASED,

Plaintiffs,

vs. Case No. 2013-135055-NZ

Hon. Nanci J. Grant

WILLIAM KEENE,

Defendant.

The Deposition of WILLIAM KEENE,

Taken at 29800 Telegraph Road,

Southfield, Michigan,

Commencing at 1:43 p.m.,

Thursday, November 14, 2013,

Before Susan L. Lowry, CSR-2636.

vs.

WILLIAM KEENE, JENNIFER KEENE,  
Individually, jointly and severally,  
Defendants/Cross-Defendants.

The Deposition of WILLIAM KEENE,  
Taken at 29800 Telegraph Road,  
Southfield, Michigan,  
Commencing at 1:43 p.m.,  
Thursday, November 14, 2013,  
Before Susan L. Lowry, CSR-2636.

APPEARANCES:

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Appearing on behalf of the Plaintiff.

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Appearing on behalf of Monica Lynne Lupiloff, Nicole

Renee Lupiloff and Nicole Renee Lupiloff, Personal

Representative of the Estate of Gary Lupiloff,

Deceased.

1 JOHN H. BREDELL  
 2 Bredell & Bredell  
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 5 734.482.5000  
 6 Appearing on behalf of William Keene and Jennifer  
 7 Keene.  
 8  
 9 ALSO PRESENT:  
 10 JOSHUA DAVID NUCIAN  
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 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 Southfield, Michigan  
 2 Thursday, November 14, 2013  
 3 1:43 p.m.  
 4  
 5 WILLIAM KEENE,  
 6 was thereupon called as a witness herein, and after  
 7 having first been duly sworn to testify to the truth,  
 8 the whole truth and nothing but the truth, was  
 9 examined and testified as follows:  
 10 MR. SCHMIDT: Let the record show this is  
 11 the deposition of William Keene, taken pursuant to  
 12 notice under the Federal Rules of Civil Procedure, to  
 13 be used for the purposes provided therein.  
 14 MR. BREDELL: Just one housekeeping matter.  
 15 There is also pending a civil case in the Oakland  
 16 County Circuit Court with relatives of the Lupiloffs  
 17 that are the plaintiffs. Mr. Holt is the attorney in  
 18 that. We've agreed that this deposition will be in  
 19 both cases.  
 20 I'm going to provide the court reporter  
 21 with a caption on that case, meaning that after this  
 22 dep is concluded, whether it's adjourned to a later  
 23 time or we complete it today, that there will not be a  
 24 second deposition of Bill Keene, that it can be used  
 25 in the Oakland County case. This will be that

1 deposition.  
 2 (Off the record at 1:44 p.m.)  
 3 (Back on the record at 1:55 p.m.)  
 4 EXAMINATION  
 5 BY MR. SCHMIDT:  
 6 Q. Sir, I'm going to ask you some questions that have to  
 7 do with this lawsuit filed by Nationwide Life  
 8 Insurance Company against you and several other  
 9 people. Please listen to the question. If you  
 10 understand it, answer it. If you don't, let me know.  
 11 Okay?  
 12 A. Yes.  
 13 Q. Please give a verbal answer to every question so the  
 14 court reporter can take it down. Try to stay away  
 15 from words like um-um, either say yes, no or some  
 16 other complete verbal answer. Is that understandable?  
 17 A. Yes.  
 18 Q. Sir, would you please tell us your name.  
 19 A. William Fraser Keene.  
 20 Q. And your date of birth?  
 21 A. 5-10-66.  
 22 Q. And your current address?  
 23 A. 2704 Brockman, Ann Arbor, Michigan 48104.  
 24 Q. How long have you lived there?  
 25 A. Seven or eight years.

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- 1 Q. And who do you live there with?
- 2 A. My wife, Jennifer, and my two children and a new
- 3 puppy.
- 4 Q. And your children's names are?
- 5 A. Julia and Avery.
- 6 Q. And Julia's date of birth is?
- 7 A. Julia is September 20th.
- 8 Q. The year?
- 9 A. 2005.
- 10 Q. Okay. Avery?
- 11 A. Avery -- it's not 2005, 2008.
- 12 Q. Who's the '8?
- 13 A. Julia. And Avery is February 25th, and she is two
- 14 years old. So she was born two years ago.
- 15 Q. So she was born in 2011?
- 16 A. Yes.
- 17 Q. So Avery is a girl?
- 18 A. Both girls.
- 19 Q. You graduated from high school?
- 20 A. I did.
- 21 Q. Which high school?
- 22 A. Southfield Lathrup High School.
- 23 Q. What year?
- 24 A. 1984.
- 25 Q. Did you go to college?

Page 10

- 1 A. I did.
- 2 Q. Where did you go?
- 3 A. I went to Michigan State University and the University
- 4 of Michigan.
- 5 Q. Did you get a degree from Michigan State?
- 6 A. I did.
- 7 Q. What was that?
- 8 A. Psychology.
- 9 Q. That was a four-year program?
- 10 A. I accomplished it in five years.
- 11 Q. And what year did you graduate?
- 12 A. 1989.
- 13 Q. Then you went to Michigan?
- 14 A. I went to Michigan my junior year of undergrad.
- 15 Q. And why was that?
- 16 A. I wanted to experience the University of Michigan.
- 17 Q. Okay. So your degree is from Michigan State.
- 18 A. Correct.
- 19 Q. Any other education after your degree at Michigan
- 20 State?
- 21 A. No.
- 22 Q. Is your marriage to Jennifer your only marriage?
- 23 A. Yes.
- 24 Q. Where were you employed after getting out of college,
- 25 the first job?

Page 11

- 1 A. My first job out of college was a job at a psychiatric
- 2 hospital called Kingswood.
- 3 Q. Where was that?
- 4 A. That is -- I believe that's Ferndale.
- 5 Q. Is it still in business?
- 6 A. No, it's long gone.
- 7 Q. How long were you working there?
- 8 A. About a year.
- 9 Q. What was your job there?
- 10 A. Counselor.
- 11 Q. Are you licensed in psychology?
- 12 A. No.
- 13 Q. Okay. What was your next job?
- 14 A. I worked at a high-fidelity store called the
- 15 Gramophone.
- 16 Q. Where was that located?
- 17 A. West Bloomfield.
- 18 Q. Is that still there?
- 19 A. No.
- 20 Q. What did you do there?
- 21 A. I sold high-end stereo equipment.
- 22 Q. Salesperson?
- 23 A. Correct.
- 24 Q. How long were you there?
- 25 A. About six months.

Page 12

- 1 Q. What was your next job?
- 2 A. I worked as an English teacher in China.
- 3 Q. How long did you have that job?
- 4 A. About six months.
- 5 Q. Who was your boss at Gramophone, do you remember?
- 6 A. A fellow named Richard Howard.
- 7 Q. Who was your boss at the Kingswood Hospital?
- 8 A. I don't remember.
- 9 Q. This English teacher job, what was that through, some
- 10 program or something?
- 11 A. It was.
- 12 Q. What was the program?
- 13 A. I worked for the Chinese Overseas Shipping Company.
- 14 Q. Where were they located?
- 15 A. In Qingdao, China. Q-I-N-G-D-A-O.
- 16 Q. And that was for how long, you said six months?
- 17 A. Um-hum. Yes.
- 18 Q. And who was your supervisor for that job?
- 19 A. I don't remember.
- 20 Q. That was a Chinese operation or a U.S. operation?
- 21 A. It was a Chinese operation.
- 22 Q. Do you speak any language besides English?
- 23 A. Not really, no.
- 24 Q. You were teaching English over there?
- 25 A. Correct.

Page 13

1 Q. What was your next job?  
 2 A. I became a pharmaceutical rep for a company called  
 3 Glyderm. I'll spell it for you. G-L-Y-D-E-R-M.  
 4 Q. D --  
 5 A. -- E-R-M.  
 6 Q. Where are they located?  
 7 A. When I worked for them?  
 8 Q. Yes.  
 9 A. They were in Bloomfield Hills, I believe.  
 10 Q. Are they still in business?  
 11 A. The company was bought from the owner that I knew, so  
 12 I believe they are still in business.  
 13 Q. Who was your boss there?  
 14 A. The owner of the company was Marvin Klein.  
 15 Q. K --  
 16 A. -- L-E-I-N.  
 17 Q. Is he still --  
 18 A. He died.  
 19 Q. He's dead. You said it was bought by someone else?  
 20 A. It was.  
 21 Q. Do you know who bought it?  
 22 A. A large pharmaceutical company.  
 23 Q. Okay. How long were you there?  
 24 A. Five years.  
 25 Q. And you were a sales rep?

Page 14

1 A. Yes.  
 2 Q. Who was your supervisor?  
 3 A. At the end of the company, his name was Martin  
 4 Davidson.  
 5 MR. DANZIG: Off the record.  
 6 (Off the record at 2:02 p.m.)  
 7 (Back on the record at 2:03 p.m.)  
 8 BY MR. SCHMIDT:  
 9 Q. Martin Davidson was the supervisor, correct? Why did  
 10 you leave that job?  
 11 A. The company was bought by a larger company that no  
 12 longer needed a sales force.  
 13 Q. What was your next job?  
 14 A. I became a real estate agent.  
 15 Q. And what company did you work for, your first one?  
 16 A. The first one I believe was called Bloomfield --  
 17 Bloomfield Hills Realty, I think.  
 18 Q. Where was that?  
 19 A. In Bloomfield Hills.  
 20 Q. Who was your supervisor there?  
 21 A. Walt Flood. F-L-O-O-D, I believe.  
 22 Q. What years were you there?  
 23 A. I would estimate 1993 to maybe '95.  
 24 Q. How long were you there?  
 25 A. About five months.

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1 Q. Do you know if they're still in business?  
 2 A. I don't believe so.  
 3 Q. Where did you go from there?  
 4 A. Real Estate One right here in Farmington.  
 5 Q. Okay. Farmington Hills?  
 6 A. Yes.  
 7 Q. And who was your boss there? It says manager, Steve  
 8 Leiban.  
 9 A. Yes.  
 10 Q. Is that the right place?  
 11 A. Yeah.  
 12 Q. L-E-I-B-A-N?  
 13 A. Yes.  
 14 Q. In the interrogatories you've got that as starting in  
 15 2000. So is that maybe you were wrong about the other  
 16 one being in '95, whatever you said, five months in  
 17 '95?  
 18 A. That sounds right.  
 19 Q. That you were wrong about the '95?  
 20 A. Correct.  
 21 Q. Okay. So how long were you at Real Estate One?  
 22 A. I think about five to six years.  
 23 Q. Okay. And your job was a salesperson?  
 24 A. Correct.  
 25 Q. And why did you leave that job?

Page 16

1 A. I decided to work with Re/Max, with their program.  
 2 Q. So you went to Re/Max?  
 3 A. Um-hum.  
 4 MR. BREDELL: Yes?  
 5 A. Yes.  
 6 BY MR. SCHMIDT:  
 7 Q. That was in Farmington Hills?  
 8 A. Yes.  
 9 Q. Who was your boss there?  
 10 A. Carol Boji.  
 11 Q. And how long did you stay at Re/Max?  
 12 A. I think I was there for five or six years.  
 13 Q. So that would take us up to 2010 or so?  
 14 A. I'm not positive, but I think so.  
 15 Q. What was your job after that?  
 16 A. I was with the current company I'm with now called  
 17 Community Choice Realty.  
 18 Q. Why did you leave Re/Max?  
 19 A. Community Choice had a better program for me.  
 20 Q. I don't need a long dissertation, but what do you mean  
 21 a better program?  
 22 A. Re/Max charges approximately \$1,000 a month to hang  
 23 your license there, Community Choice only charges \$145  
 24 a month for the same service.  
 25 Q. Who was your boss at Community Choice?

Page 17

1 A. John Evans.  
 2 Q. John Evans?  
 3 A. Yes.  
 4 Q. Where is Community Choice located?  
 5 A. On Maple in Birmingham.  
 6 Q. So you commuted to there from Ann Arbor?  
 7 A. I don't have to go into the office.  
 8 Q. Okay. Are you still at Community Choice?  
 9 A. Yeah.  
 10 Q. And your job, your position is salesperson?  
 11 A. Salesperson.  
 12 Q. Does that cover all your employment from college up  
 13 until now?  
 14 A. Yes.  
 15 Q. Have you been involved in any lawsuits other than the  
 16 one that we're here for today?  
 17 A. Yes.  
 18 Q. What other lawsuits? You mentioned in the  
 19 interrogatories the Alvie case. Do you know what I'm  
 20 talking about?  
 21 A. Oh, Avie case, A-V-I-E, yeah.  
 22 Q. So I'm familiar with that one. That was the Oakland  
 23 County Court?  
 24 A. I believe so, yes.  
 25 Q. What happened in that case? Tried, settled?

Page 18

1 A. I believe we settled before we went to trial.  
 2 Q. And they paid you some money?  
 3 A. Yes.  
 4 Q. Do you remember what they paid you?  
 5 A. I believe it was 2,000 or so dollars a month for  
 6 approximately a year.  
 7 Q. Any other lawsuits you've been in, either suing  
 8 somebody or getting sued, other than this one and the  
 9 Avie case?  
 10 A. I sued someone a number of years ago. It had to deal  
 11 with a road being built.  
 12 Q. That's not in interrogatory answers, is it?  
 13 A. No.  
 14 Q. What court were you in?  
 15 A. It took place in South Lyon, so I'm not sure of the  
 16 court. I think it was off of Grand River.  
 17 Q. A district court, if you know? You were suing  
 18 somebody?  
 19 A. Yes.  
 20 Q. What for?  
 21 A. For him to pay his fair share of a road that I built.  
 22 Q. And where did you build a road?  
 23 A. In South Lyon.  
 24 Q. That was a special kind of a project or something?  
 25 A. Yes.

Page 19

1 Q. So what was the claim? How much money were you suing  
 2 for?  
 3 A. I don't know exact. I think it was maybe four or  
 4 \$5,000, something like that.  
 5 Q. And what happened to that case? Did you try it or  
 6 settle it or what?  
 7 A. We tried it.  
 8 Q. And what happened? Did you win or lose?  
 9 A. I lost.  
 10 Q. So you got no money?  
 11 A. No. The fellow ended up paying me \$2,000.  
 12 Q. And how was that?  
 13 A. It was a fair amount of money he thought for having  
 14 access to a road that I built for him.  
 15 Q. So you tried the lawsuit, you lost but he still paid  
 16 you 2,000 bucks.  
 17 A. Correct.  
 18 Q. What was his name?  
 19 A. I don't remember.  
 20 Q. Any other lawsuits you've been involved in?  
 21 A. Not that I can remember.  
 22 Q. Have you ever made any insurance claims, a stolen car,  
 23 a house broken into?  
 24 MR. BREDELL: You're not including health  
 25 insurance claims, I take it? What kind of claim? Be

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1 more specific.  
 2 BY MR. SCHMIDT:  
 3 Q. Not including for health insurance.  
 4 A. I think I filed a claim for some water damage to a  
 5 house in Walled Lake.  
 6 Q. When was that?  
 7 A. I don't remember the year.  
 8 Q. A house you owned, or what?  
 9 A. I owned.  
 10 Q. Is it a house you lived in?  
 11 A. I owned and I lived in.  
 12 Q. Do you remember who the insurance company was?  
 13 A. No, I don't.  
 14 Q. Do you remember how much money you got?  
 15 A. No.  
 16 Q. Was it more than 10,000 bucks?  
 17 A. No.  
 18 Q. Any other insurance claim that you can recall making  
 19 other than for health insurance?  
 20 A. No.  
 21 Q. Did you ever file a workers' comp claim?  
 22 A. No.  
 23 Q. Have you ever been arrested for anything?  
 24 A. No.  
 25 Q. Have you ever declared bankruptcy?

1 A. Nope.  
 2 Q. Any company that you've had ownership interest in ever  
 3 file for bankruptcy?  
 4 A. No.  
 5 Q. Do you have any expert witnesses for this case?  
 6 A. I believe that's a question for --  
 7 MR. BREDELL: Well, I've given you all of  
 8 the witness lists.  
 9 MR. SCHMIDT: Well, you answered has not  
 10 retained any experts but reserves the right to do so.  
 11 So as of today do you have any expert  
 12 witnesses?  
 13 MR. BREDELL: No.  
 14 MR. SCHMIDT: Pardon me?  
 15 MR. BREDELL: No.  
 16 BY MR. SCHMIDT:  
 17 Q. Have you given any statements to anybody about what is  
 18 involved with this case other than talking to your  
 19 attorneys?  
 20 A. I talked to my father about it.  
 21 Q. Was that a written, oral, recorded? How was it? Just  
 22 talking?  
 23 A. Just talking.  
 24 Q. It wasn't written?  
 25 A. (Shakes head.)

1 Q. It wasn't taped or anything?  
 2 A. No.  
 3 Q. Have you given any written or tape recorded  
 4 statements?  
 5 A. No.  
 6 Q. As far as statements that you're aware about the  
 7 incident, you have the one statement from your  
 8 neighbor, Susan Smith. Any other written statements  
 9 you're aware of?  
 10 A. Written statements about this case?  
 11 Q. About the incident, correct, this case.  
 12 A. I believe there was a witness at the scene of the  
 13 crime that was listed in the documents.  
 14 Q. Mary Colombo?  
 15 A. I believe that's her name.  
 16 Q. Other than Mary Colombo and Susan Smith, are you aware  
 17 of any other statements from anybody concerning this  
 18 incident or that this lawsuit concerns?  
 19 A. I can't think of anyone right now.  
 20 Q. For your real estate work, is that -- this question  
 21 pertains to the time period 2002 to 2010 -- was that  
 22 commercial, residential, or what was it?  
 23 A. During that time period, I primarily dealt with  
 24 residential real estate of one form or another.  
 25 Q. When you're working for these real -- like your job at

1 Community Choice, are you an independent contractor or  
 2 an employee, if you know?  
 3 A. I'm an independent contractor.  
 4 Q. Does that pertain to every real estate job you've had,  
 5 you've always been an independent contractor?  
 6 A. Yes.  
 7 Q. And do you have -- do you just work under your own  
 8 name or do you have a business name that you use?  
 9 A. Both. I have my own personal name and I work under  
 10 the name of the company, whether it's Community Choice  
 11 Realty or Re/Max or Real Estate One.  
 12 Q. We've reviewed your tax returns, or whatnot, and you  
 13 had a significant decline in your income from 2006 to  
 14 2007 to 2008. Can you explain why that was going on?  
 15 A. The market slowed down a little bit.  
 16 Q. Well, you went from making 60, 70, 80,000 bucks to  
 17 losing 8,000 bucks. What else is that, the market is  
 18 slowing down?  
 19 A. I'm not sure exactly what numbers you're talking  
 20 about.  
 21 Q. Your total income in 2008, reported to the IRS, was a  
 22 negative \$8,686. It had been \$86,600 three years  
 23 earlier. So you went from 86,600 in 2005 to 63,400 in  
 24 2006 to 17,600 in 2007 to losing 8,686 in 2008. So  
 25 what is your explanation for that?

1 A. I wrote off a lot of things on my taxes.  
 2 Q. What do you mean by that? What are you writing off on  
 3 your taxes?  
 4 A. A lot of my expenses I get to write off on my taxes.  
 5 So even though it may not show that I made a lot of  
 6 money, I think I did just fine.  
 7 Q. So are you saying that your overall receipts stayed  
 8 the same over that period of time, 2005 to 2010 or so?  
 9 A. I don't know, I'd have to look at my taxes.  
 10 Q. You produced tax returns in this case, in response to  
 11 our discovery requests, but the ones we got from the  
 12 IRS were different, had different numbers on them.  
 13 Can you explain why that would be?  
 14 A. No.  
 15 Q. Did you know that what you gave us had different  
 16 numbers than what you filed with the IRS?  
 17 A. No.  
 18 Q. You had a loss of 49,500 bucks from a company called  
 19 Pipeline, LLC in 2007. What was Pipeline, LLC?  
 20 A. That was a company owned by Roger Avie.  
 21 Q. What was the loss for?  
 22 A. Pipeliners gave me, I believe a document called a K1  
 23 or K2, which allowed me to use their losses in their  
 24 company to offset gains that I had that year.  
 25 Q. In 2008 you had a \$21,200 interest expense. Do you

Page 25

1 know what that was for?

2 A. Not off the top of my head.

3 Q. What would you have to look at to refresh your memory

4 about that?

5 A. I would have to look at my tax documents, I believe.

6 Q. Well, we asked you today did you bring with you all

7 documents requested and all discovery requests needed

8 in this matter, to bring all documents produced by

9 third parties. We requested your tax returns.

10 So do you have those with you to look at?

11 A. No, I don't.

12 Q. Were you aware this deposition was duces tecum, to

13 bring with you all document requests and all discovery

14 requests made in this case?

15 MR. BREDELL: I've given them all to you.

16 We've given you all of those.

17 MR. SCHMIDT: But I'm asking him to find

18 something, he said he's got to look for in there.

19 BY MR. SCHMIDT:

20 Q. So you don't have them with you?

21 A. I did not bring any documents with me.

22 Q. Let me hand you this document, it's called Schedule 2.

23 It's a summary of your tax return information. In

24 that column entitled -- in the fourth column over,

25 2008 Realtor, do you see that column?

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1 A. Yes.

2 Q. And about halfway down, over to the left of that,

3 expenses, interest 21,207?

4 A. Um-hum.

5 Q. Does that refresh your memory, looking at those

6 numbers, as to what that was for?

7 A. No, I don't know exactly what that number would be

8 for. I could guess, but I don't know off the top of

9 my head.

10 Q. All right. Subject to objection, what's your guess as

11 to what it is?

12 A. It could be \$21,000 of interest that I wrote off on my

13 taxes, which was interest that I paid on the mortgage.

14 But that's my just best guess.

15 Q. If you look across, this is for every year, from 2006

16 to 2010, you don't have interest in any other year.

17 So that's what I'm just wondering. But you don't

18 remember why you would have 21,000 in one year and not

19 in any other year?

20 A. No.

21 Q. If you look across the top, it's got your gross

22 receipts.

23 A. Um-hum.

24 Q. And it's got 152,000 in 2005, 94,000 in 2006, 65,000

25 in 2007, 71,000 in 2008, 46,000 in 2009, 5,000 in

Page 27

1 2009 -- oh, you have two different incomes, 46 and 5,

2 and then 15,000 and 6,000 in 2010.

3 A. Um-hum.

4 Q. You told me before that you, I thought you said your

5 receipts stayed the same and you just had higher

6 expenses.

7 Are these numbers right or wrong as far as

8 what your receipts are?

9 A. Well, without looking at my personal tax records that

10 I've done myself, if these are correct, then in 2010 I

11 made 15,000 bucks.

12 Q. My earlier question was, was whether your income was

13 going down from 2005 up to 2010, and you said -- I

14 thought what you said was that your income wasn't

15 going down, your receipts weren't going down but your

16 expenses were going up.

17 Does this refresh your memory that maybe

18 you were wrong about that?

19 A. Well, with regard to 2009 and 2010, the amount of

20 money I made went down substantially. But for the

21 amount of time and effort that I was putting into

22 work, I would say they are comparable.

23 Q. What do you mean by that?

24 A. Well, in 2010 I became a stay-at-home dad, so my hours

25 that I worked went down substantially.

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1 Q. And why did you become a stay-at-home dad in 2010?

2 A. Because my wife gave birth to our child.

3 Q. And what does your wife do?

4 A. She's called a physician assistant.

5 Q. So she gave birth to her child, so then you decided

6 for you to stay home and take care of the children and

7 she goes to work?

8 A. That's right.

9 Q. And whose decision was that?

10 A. It was both of ours.

11 Q. So why did your income go down in 2009?

12 A. The market slowed down.

13 Q. In 2008 you've got a deduction for business use of

14 your house. Do you see that at the bottom of that

15 schedule in 2008? The same column as the interest is

16 in.

17 A. Okay.

18 Q. The third number from the bottom, \$20,083, business

19 use of home.

20 A. Um-hum.

21 Q. Do you see that?

22 A. Yes.

23 Q. Why do you have that only in 2008?

24 A. When I did my taxes, I didn't always include that in

25 every year. So I included it in 2008, but I didn't



1 include it in the other years.  
 2 Q. Is there any reason why in 2008 you did it and no  
 3 other years?  
 4 A. No.  
 5 Q. Did your use of your own differ in 2008 from what you  
 6 did in the other years as far as business goes?  
 7 A. No.  
 8 Q. Did you do your own taxes or did you have someone help  
 9 you?  
 10 A. Sometimes I did my own taxes and sometimes I hired  
 11 someone.  
 12 Q. Look at Schedule 3. At the top right corner it says  
 13 Schedule 3.  
 14 A. Um-hum.  
 15 Q. It's got income and expenses for your rental  
 16 properties.  
 17 You've got income and expense in 2006 and  
 18 2007 but none in 2008. Do you know why that is?  
 19 A. No, I don't.  
 20 Q. In the prior year, 2007, you've got income from 4396  
 21 Rolling Pine. And you've got nothing for 4396 Rolling  
 22 Pine in 2008, then you have income from Rolling Pine  
 23 in 2009.  
 24 Do you know why Rolling Pine had income and  
 25 expense in 2007 and 2009 but not 2008?

1 A. Well, the property was rented out, I believe money was  
 2 received, but I don't -- I don't know why it was not  
 3 listed. I may have put the money somewhere else.  
 4 Q. What do you mean by put the money somewhere else?  
 5 A. Like I might have written the rent received somewhere  
 6 else in my taxes, but I don't really remember.  
 7 Q. According to this, the only rent you put down on your  
 8 taxes in 2008 was zero. Do you recall you had no rent  
 9 in 2008?  
 10 A. Off the top of my head, I don't remember how long  
 11 property was rented in 2008.  
 12 Q. Do you know what Schedule E is for federal tax  
 13 filings?  
 14 A. Not off the top of my head, no.  
 15 Q. If I told you Schedule E was for income from rental  
 16 properties, would you know that was correct or not?  
 17 A. I wouldn't know for sure, no.  
 18 Q. If you weren't putting your rents received and  
 19 expenses for 4396 Rolling Pine on Schedule E, where  
 20 did you put it?  
 21 A. Mr. Schmidt, I don't really remember 2008, without  
 22 looking at my own tax records to see how it was  
 23 rendered or not.  
 24 Q. Do you remember having a tenant there in 2008?  
 25 A. I believe I did, but I can't say for sure.

1 Q. Do you know if you had the same tenant from 2007 into  
 2 '8 and into '9, the same person, or not?  
 3 A. I don't believe so.  
 4 Q. Do you recall who your tenant was in 2007 at Rolling  
 5 Pine?  
 6 A. I believe it was a couple from Australia.  
 7 Q. Do you remember their name?  
 8 A. I think their last name was Roberts.  
 9 Q. Do you know where they are today?  
 10 A. No, I don't know where the wife lives, but come to  
 11 think of it I don't know if it was -- yeah, I'm trying  
 12 to remember if it was Australia or England somewhere,  
 13 where they came from. But I think that's when they  
 14 moved out, was in 2007.  
 15 Q. Do you remember what the first name was?  
 16 A. I think the wife's name was Sandy.  
 17 Q. Do you remember the husband's name?  
 18 A. Not off the top of my head.  
 19 Q. You would have that in some records somewhere?  
 20 A. I believe I would.  
 21 Q. Okay. And then who was the next tenant there?  
 22 A. I believe I had a pastor live in the home.  
 23 Q. What year would that have been?  
 24 A. I would think that would have been around 2008.  
 25 Q. Do you remember his or -- was it a lady or a man?

1 A. It was a man.  
 2 Q. Do you remember his name?  
 3 A. No, I don't off the top of my head.  
 4 Q. How long was he there?  
 5 A. I'm not sure when he moved out and when he -- moved in  
 6 or moved out, but I would think somewhere around a  
 7 year.  
 8 Q. Who came in after him, anybody?  
 9 A. Yes, I did have a fellow move in after the pastor.  
 10 Q. Do you remember what his name was?  
 11 A. His name was Todd Burch.  
 12 Q. B-U-R-C-H?  
 13 A. I actually don't know how to spell his last name.  
 14 Q. Do you know where he is now?  
 15 A. No.  
 16 Q. How long was he there?  
 17 A. I believe he was there for less than a year.  
 18 Q. Who followed Mr. Burch as a tenant?  
 19 A. No one.  
 20 Q. He was the last one?  
 21 A. Correct.  
 22 Q. Was that the home that was foreclosed on?  
 23 A. Correct.  
 24 Q. If you look for 2009, there's two other, there's this  
 25 3983 Courville, C-O-U-R-V-I-L-L-E, and 3006 Kendall,

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1 K-E-N-D-A-L-L. Were those properties rented?  
 2 A. No.  
 3 Q. You had bought those to be rentals?  
 4 A. I bought them to flip them.  
 5 Q. So you did not intend to rent them?  
 6 A. It wasn't my plan.  
 7 Q. And you never rented them.  
 8 A. No.  
 9 Q. Correct?  
 10 A. Correct.  
 11 Q. What happened to those properties?  
 12 A. If I remember right, Courville I sold after a number  
 13 of months, and Kendall I believe burnt down.  
 14 Q. What town was Courville in?  
 15 A. Detroit.  
 16 Q. Do you remember what you sold it for?  
 17 A. No.  
 18 Q. Did you make money on it or lose money?  
 19 A. I believe I lost money on it.  
 20 Q. How about on the Kendall property, did you have an  
 21 insurance claim for that?  
 22 A. No.  
 23 Q. You had no insurance?  
 24 A. No.  
 25 Q. Correct?

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1 A. Correct.  
 2 Q. Was that also in Detroit?  
 3 A. Yes.  
 4 Q. BK-II Development, LLC; do you know what that is?  
 5 A. Yes.  
 6 Q. What is that?  
 7 A. That's a company that I own.  
 8 Q. And what business is that for?  
 9 A. To buy real estate.  
 10 Q. To buy and sell?  
 11 A. Correct.  
 12 Q. Also to rent, or not?  
 13 A. No, I don't think to rent.  
 14 Q. How long has that been in business?  
 15 A. A number of years.  
 16 Q. Do you have any partners?  
 17 A. No.  
 18 Q. Do you know what years -- is it still in business?  
 19 A. I don't believe it's still in business.  
 20 Q. What years was it in business?  
 21 A. I don't know off the top of my head.  
 22 (Off the record at 2:40 p.m.)  
 23 (Back on the record at 2:41 p.m.)  
 24 BY MR. SCHMIDT:  
 25 Q. If you look at that, it shows there were some large

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1 checks, \$16,018, \$21,345 and 18,000 written from the  
 2 BK-II, LLC National City/PNC Bank account in February,  
 3 March and April of 2006.  
 4 Do you know what those large checks were  
 5 for, who they were written to and for what?  
 6 A. No.  
 7 Q. Do you have to review some records to remember what  
 8 that was?  
 9 A. I would.  
 10 Q. If you look over on the left column, it's got deposits  
 11 in October, November and December of 2008 of \$30,000,  
 12 \$30,000 and \$10,000.  
 13 Do you know what those were for, the source  
 14 of those deposits?  
 15 A. No, I don't remember what those were for.  
 16 Q. Would you have records to be able to find that out?  
 17 A. I could, I'm sure.  
 18 Q. In late 2008, if you go over to the far right column,  
 19 about the same time as those deposits, it looks like  
 20 almost all the money that was in that account, 11,000,  
 21 33,856 and 10,000 were withdrawn.  
 22 A. Um-hum.  
 23 Q. Do you know why that was done?  
 24 A. No, off the top of my head I don't.  
 25 Q. Would you have records to figure that out?

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1 A. I could, I'm sure.  
 2 Q. If you look at that, that overall Schedule 7, it looks  
 3 like there's some activity in February, March and  
 4 April of 2006, and there's like no activity until  
 5 October of 2008, we're talking a year and-a-half  
 6 almost. Do you know why that is?  
 7 Did I say a year and-a-half? I meant to  
 8 say two and-a-half years.  
 9 A. I'm not positive, but I believe the withdrawals were  
 10 to purchase real estate in Detroit.  
 11 Q. That would have been Kendall and Courville?  
 12 A. Correct.  
 13 Q. But my question is why there's no activity for two  
 14 and-a-half years.  
 15 A. I didn't buy any properties to flip.  
 16 Q. If the properties held were Kendall and Courville,  
 17 then what's the source of the income in October,  
 18 November and December of 2008 of \$70,000?  
 19 A. If I remember right, I brought in some investors to  
 20 put in some money. So I put the money into the  
 21 account and I took money out of the account to buy the  
 22 real estate.  
 23 Q. Well, when did you buy the real estate, in 2008 or in  
 24 2006?  
 25 A. Well, I believe it would have been right around 2008

1 that I was purchasing the properties.  
 2 Q. Does that refresh your memory of why the money is  
 3 going out in 2006?  
 4 A. Yeah, I'm pretty sure that's exactly where the money  
 5 went, to buy and fix up properties in the City of  
 6 Detroit.  
 7 Q. I'm asking now 2006.  
 8 A. Oh, 2006?  
 9 Q. You've got money going out in 2006, 16,000, 21,000,  
 10 and 18,000.  
 11 Do you know why that's going on?  
 12 A. I'd have to go back in my records. I believe that's  
 13 when I was doing a land development project in South  
 14 Lyon, but I'm not a hundred percent positive.  
 15 Q. Your wife had a Vanguard account. Were you familiar  
 16 with that at all?  
 17 A. No.  
 18 Q. She had a Vanguard account with \$78,700 in it in  
 19 December of '10, closed that and switched it over to a  
 20 checking account at Midwest Credit Union.  
 21 Were you aware of that transaction?  
 22 A. No.  
 23 Q. Were you aware that she had \$78,700 in a Vanguard  
 24 account in December of 2010?  
 25 A. I'm not aware of the exact number, but I know my wife

1 had money in accounts.  
 2 Q. Do you know how much she had?  
 3 A. Not exactly, no.  
 4 Q. You don't share financial information with your wife?  
 5 A. We share financial information with one another, but  
 6 not with regard to exact numbers, just ballparks.  
 7 Q. So what ballpark were you aware she had in a Vanguard  
 8 account in December of '10?  
 9 A. Off the top of my head, I don't know. But I was aware  
 10 of all of her, I'm sure all of her financial  
 11 situations, what accounts she had.  
 12 Q. I'll show you this Schedule 2-A. And that shows she  
 13 had the \$78,700 in the Vanguard account, which she  
 14 took out of there.  
 15 A. Um-hum.  
 16 Q. Were you aware that she then transferred it to Midwest  
 17 Credit Union and wrote a check for \$700,700 (sic) out  
 18 of Midwest Credit Union?  
 19 MR. BREDELL: What's the number again you  
 20 said?  
 21 MR. SCHMIDT: \$78,700.  
 22 MR. BREDELL: I thought you said 700,000.  
 23 MR. SCHMIDT: Did I say 700,000?  
 24 MR. BREDELL: Yes. That's okay, you  
 25 corrected it.

1 A. I'm sorry, your question?  
 2 BY MR. SCHMIDT:  
 3 Q. I'll show you Schedule 3. I showed you Schedule 2-A.  
 4 That shows she had \$78,700 in Vanguard --  
 5 A. Um-hum.  
 6 Q. -- which she closed in December of '10.  
 7 And then Schedule 3 is for Midwest Credit  
 8 Union.  
 9 A. Um-hum.  
 10 Q. And it shows that she wrote a check for \$78,400 out of  
 11 that account in February of '11.  
 12 Do you know where she sent that money?  
 13 A. No.  
 14 Q. Do you recall discussing that with her, who she'd be  
 15 writing a check for for 78,000 bucks?  
 16 A. No.  
 17 Q. Do you remember having a PNC home equity line of  
 18 credit?  
 19 A. I believe I did.  
 20 Q. Do you know how much you borrowed against that line of  
 21 credit in 2007?  
 22 A. Not an exact number.  
 23 Q. Schedule 11 shows you borrowed \$48,000 between April  
 24 to November of 2007.  
 25 Do you know what that was for?

1 A. No. I'd have to open my records.  
 2 Q. Do you remember having a Fidelity brokerage account?  
 3 A. I believe I did.  
 4 Q. Schedule 19 is for your Fidelity account. It shows a  
 5 10,000 deposit in December of '06.  
 6 Do you know what that was from?  
 7 A. Yes.  
 8 Q. What was that from?  
 9 A. I believe Chase offered a credit card, where you could  
 10 take \$10,000 out at no interest for one year. So I  
 11 took the money out and I invested it in Fidelity.  
 12 Q. Which bank was that from?  
 13 A. Chase.  
 14 Q. So you could use 10,000 bucks from Chase for a year  
 15 with no interest?  
 16 A. Correct.  
 17 Q. That account was then liquidated in 2009. Why was  
 18 that?  
 19 A. Well, I'm not sure of the date, but the stocks I  
 20 bought all went down and I lost money, so I liquidated  
 21 the account, essentially.  
 22 Q. Where did you send the money that was left to?  
 23 A. I spent it.  
 24 Q. Pardon me?  
 25 A. I spent it.

1 Q. The 6,500 bucks that you had left, you spent?  
 2 A. If that's what was left, yes.  
 3 Q. You had a PNC -- you had, what, a line of credit or an  
 4 account with PNC Bank, do you remember, in 2010? Did  
 5 they write that off?  
 6 A. Which account, I apologize?  
 7 Q. PNC, do you recall them writing off one of your  
 8 accounts with them?  
 9 A. They may have.  
 10 Q. Do you know why?  
 11 MR. BREDELL: You'd probably have to ask  
 12 them.  
 13 BY MR. SCHMIDT:  
 14 Q. Did they discuss it with you, why they were just going  
 15 to write it off?  
 16 A. I don't remember off the top of my head.  
 17 Q. Did you ever consider, in a period of time from 2002  
 18 to 2010, to file bankruptcy?  
 19 A. You're asking me if I ever thought of --  
 20 Q. Were you considering it?  
 21 A. No.  
 22 Q. Were you getting into financial problems during that  
 23 period of time?  
 24 A. No.  
 25 Q. Pardon me?

1 A. Nope.  
 2 Q. Were you in a declining financial condition over that  
 3 period of time?  
 4 A. I was making less money.  
 5 Q. What, did you have more debts?  
 6 A. Did I have more debts. I don't understand the  
 7 question.  
 8 Q. Did you or did you not have financial problems over  
 9 the period 2002 to 2010?  
 10 MR. BREDELL: You can do a better job at  
 11 defining problems.  
 12 BY MR. SCHMIDT:  
 13 Q. Do you know what I mean by a financial problem? You  
 14 can answer the question.  
 15 A. Oh, I can?  
 16 Q. Yes. You only don't answer if he tells you not to,  
 17 but I didn't hear him tell you not to.  
 18 A. No, actually, I don't feel like I was having major  
 19 problems.  
 20 Q. You said major problems. Were you having problems at  
 21 all, financial problems, or not?  
 22 A. I don't understand how you're phrasing problem. In my  
 23 mind, no, I don't feel like I was having problems.  
 24 Q. Okay. Starting in 2005, your wife's income was  
 25 \$70,000; in 2006, 50,000; in 2007, 75,000 and 2008,

1 \$2,700.  
 2 In 2005, your income was 86,000; in 2006,  
 3 53,000; in 2007, 17,000; in 2008 you lost 8,600 bucks.  
 4 So from 2005 your joint income was  
 5 \$156,000, 2008 you had a joint net loss of \$5,900.  
 6 Do you consider that a financial problem or  
 7 not?  
 8 A. Nope.  
 9 Q. So losing money as opposed to making \$150,000 is not a  
 10 problem in your definition.  
 11 A. For my wife and myself, not making money for that year  
 12 was not a problem.  
 13 Q. The next year your joint income was 60,000 bucks,  
 14 which was less than half of 2005. Is that still not a  
 15 problem?  
 16 A. Not a problem.  
 17 Q. In 2010 it's 85,000, which is less than half of 2005.  
 18 Is that still not a problem?  
 19 A. Not a problem.  
 20 Q. Your credit card debt increased from \$27,000 in 2008  
 21 to \$38,000 in 2010. Is that a problem or not a  
 22 problem?  
 23 A. It's not a problem.  
 24 Q. Your bank account balances declined from an average  
 25 ending balance of \$14,000 in 2006 to \$1,000 in 2007 to

1 2010. Is that a problem or not a problem?  
 2 A. In my definition of a problem, it was not a problem  
 3 for us.  
 4 Q. Your checking account balances declined from 28,000 to  
 5 26,000 from 2005 to 2008 to 8,000 in 2009 and 2010.  
 6 Is that a problem or not?  
 7 A. No.  
 8 Q. You had significant fees for insufficient fund checks,  
 9 overdrafts, returned checks and late fees and finance  
 10 charges in 2008, '9 and '10.  
 11 Is that a problem or not a problem?  
 12 A. It was not a problem.  
 13 Q. Pardon me?  
 14 A. It was not a problem.  
 15 Q. Do you think it's appropriate to have NSF checks and  
 16 overdraft checks and returned checks in your account?  
 17 A. It was at that time.  
 18 Q. Pardon me?  
 19 A. It was.  
 20 Q. Why were you having all of those NSF checks and  
 21 overdrafts and returned checks?  
 22 A. There wasn't money in the account.  
 23 Q. But that's not a problem?  
 24 A. No, it wasn't.  
 25 Q. So the fact that your income is down, your bank

1 accounts are down, you're getting all kinds of bounced  
 2 checks, why are you not saying you have financial  
 3 problems?  
 4 A. Because we weren't.  
 5 Q. How do you define a financial problem?  
 6 A. I don't know really how to answer that, Mr. Schmidt.  
 7 Q. You had that property on Rolling Pine in Bloomfield --  
 8 West Bloomfield, wasn't it?  
 9 A. Correct.  
 10 Q. You bought it for 527,500 bucks, a mortgage of  
 11 422,000. Does that sound right?  
 12 A. About right.  
 13 Q. And you had an additional home equity line of credit  
 14 of \$100,000?  
 15 A. Yes.  
 16 Q. And then the assessed value of that home went down to,  
 17 by 2010, to \$210,000; does that sound right?  
 18 A. Yes.  
 19 Q. That property was foreclosed on?  
 20 A. Yes.  
 21 Q. You owed the bank a hundred thousand on a line of  
 22 credit?  
 23 A. Correct.  
 24 Q. What happened to that?  
 25 A. I've made a settlement with the home equity loan

1 company.  
 2 Q. What was the settlement?  
 3 A. \$15,000.  
 4 Q. What account did that come out of?  
 5 A. My father's.  
 6 Q. And what's your dad's name?  
 7 A. Irving Keene.  
 8 Q. And where does he live?  
 9 A. He used to live in Franklin. He has passed away.  
 10 Q. And when did he pass away?  
 11 A. Three months ago.  
 12 Q. Other than your dad, were you getting support from  
 13 anybody else during this period of time, 2006 to 2010?  
 14 A. I was not.  
 15 Q. Was your wife getting support from someone else?  
 16 A. Yes.  
 17 Q. Who does she get it from?  
 18 A. She got support from her mother and her father.  
 19 Q. Over the period of 2002 to 2010, how much support did  
 20 you get from your dad?  
 21 A. I couldn't give you an exact number.  
 22 Q. Well, ballpark.  
 23 A. I think 24, \$25,000, approximately.  
 24 Q. Do you know how much support your wife got from her  
 25 parents over the period of 2002 to 2010?

1 A. No.  
 2 Q. So for that whole transaction of Rolling Pine, your  
 3 loss was a hundred thousand for buying the property,  
 4 then a hundred thousand that you borrowed, so then  
 5 your net loss was only a hundred thousand for buying  
 6 it and 15,000 your dad had to pay. Is that about  
 7 right?  
 8 A. No, my only loss was \$15,000.  
 9 Q. Well, if you bought it for 527, and you mortgaged 422,  
 10 you had to come up with a hundred thousand bucks,  
 11 didn't you?  
 12 A. I'm sorry. One more time.  
 13 Q. If you bought it for 527,000 and the mortgage was 422,  
 14 didn't you have to come up with \$100,000?  
 15 A. I did put \$100,000 down, approximately.  
 16 Q. So when it went into foreclosure, you lost a hundred  
 17 thousand, didn't you?  
 18 A. No.  
 19 Q. Why not?  
 20 A. Because I took out a home equity loan and I pulled out  
 21 a hundred thousand dollars. I had no equity in that  
 22 home at all.  
 23 Q. Is that why you took that home equity line of credit,  
 24 to get your hundred thousand dollars back?  
 25 A. At the time I took the home equity loan out, no, that

1 wasn't my intention.  
 2 Q. So your net position from that transaction was minus  
 3 \$15,000 you borrowed from your dad. Is that right?  
 4 A. No.  
 5 Q. What's wrong with that?  
 6 A. Because I made lots of money in rental income over the  
 7 years, so that number for that particular property was  
 8 plus side for me.  
 9 Q. And that rental income is all on that schedule you  
 10 went over earlier from Rolling Pine?  
 11 A. Yep. A lot of the rental incomes are shown there,  
 12 correct.  
 13 Q. The Brockman home, who is that owned by?  
 14 A. That's in my wife's name.  
 15 Q. Have you ever had an ownership interest in that?  
 16 A. No.  
 17 Q. And why is it only in your wife's name?  
 18 A. At the time that she purchased it, I had the Rolling  
 19 Pine home in my name. So for tax purposes, it's  
 20 better for her to have the house in her name and I had  
 21 the Rolling Pine house in my name.  
 22 Q. Did she own that before you were married or not?  
 23 A. After we were married.  
 24 Q. You've got a lien on the Brockman home for unpaid  
 25 taxes in 2009 and 2010. Do you know why that was?

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1 A. I've never heard of that before.  
 2 Q. You weren't aware there were taxes owed on that  
 3 property that weren't paid?  
 4 A. Correct.  
 5 Q. Do you recall there being a judgment against you by  
 6 City Bank in, I believe, 2010 or '11?  
 7 A. It sounds familiar.  
 8 Q. What was that, for \$7,800?  
 9 A. I don't know the exact number, but that sounds about  
 10 right.  
 11 Q. What was that for?  
 12 A. It may have been a credit card, I'm not positive.  
 13 Q. As far as the keeping of the records and payments, and  
 14 whatnot, on the Brockman home, is that all done by  
 15 your wife then?  
 16 A. We split them.  
 17 Q. The mortgage payments, who pays those?  
 18 A. Mostly my wife.  
 19 Q. As far as keeping the books for the Brockman home, who  
 20 keeps the books?  
 21 A. Mostly my wife.  
 22 Q. So she never told you that the taxes weren't paid on  
 23 Brockman for two years?  
 24 A. No, she didn't.  
 25 Q. When did you first meet or come in contact with

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1 involved in before that?  
 2 A. No.  
 3 Q. Did you still deal with Mr. Stevens after that meeting  
 4 in 2002?  
 5 A. I may have seen Charles a half dozen times after that,  
 6 but we didn't do any other business dealings.  
 7 Q. Did you ever have any accounts with him?  
 8 A. I did.  
 9 Q. And when did those stop?  
 10 A. I don't know the exact year.  
 11 Q. Approximately.  
 12 A. Maybe 2004.  
 13 Q. And how come you stopped dealing with Mr. Stevens?  
 14 A. I didn't trust him.  
 15 Q. And why not?  
 16 A. He put together the deal with me and Mr. Lupiloff.  
 17 Q. The deal involving the t.v. for the auto show?  
 18 A. Correct.  
 19 Q. So when did you first meet Mr. Lupiloff, do you  
 20 remember when that was?  
 21 A. I believe it was 2002.  
 22 Q. He made a proposal to you for a deal?  
 23 A. Yes.  
 24 Q. And what was the proposal?  
 25 A. It was primarily I would loan him money to rent some

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1 Mr. Lupiloff?  
 2 A. I believe that was 2002.  
 3 Q. And how did you come to meet him?  
 4 A. A financial advisor with Merrill Lynch introduced us.  
 5 Q. And do you recall who that was?  
 6 A. His name is Charles Stevens.  
 7 Q. S-T-E-V --  
 8 A. -- E-N-S. I think.  
 9 Q. Is he still at Merrill Lynch, if you know?  
 10 A. I don't believe so, no.  
 11 Q. What office was he at?  
 12 A. I believe he was at an office in Birmingham.  
 13 Q. How was the introduction done for whatever reason?  
 14 What do you recall about that?  
 15 A. I think Charles called me to tell me he met someone  
 16 who needed some money for a business venture.  
 17 Q. And do you know why Charles would call you?  
 18 A. We were acquaintances.  
 19 Q. We being you and Charles, you mean?  
 20 A. Correct.  
 21 Q. But as far as you being someone -- was he aware that  
 22 you wanted to get into business ventures or something,  
 23 or what?  
 24 A. No. I don't know why he called me.  
 25 Q. Had you ever gone in on any deals that he got you

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1 video t.v. walls.  
 2 Q. Video t.v. walls. I don't know what that is.  
 3 A. Think of a billboard and turn it into a television.  
 4 Q. Okay. And where were these going to be?  
 5 A. At the North American Auto Show.  
 6 Q. In Detroit?  
 7 A. Correct.  
 8 Q. Do you know where they were going to be at the North  
 9 American Auto Show?  
 10 A. In front of Cobo Hall.  
 11 Q. In the hall or outside?  
 12 A. Outside.  
 13 Q. On the street?  
 14 A. Correct.  
 15 Q. Do you know if Mr. Lupiloff had done that type of deal  
 16 before?  
 17 A. No.  
 18 Q. Did you do any checking up on it at all?  
 19 A. No.  
 20 Q. What was the investment supposed to be by you?  
 21 A. What was it supposed to be?  
 22 Q. How much.  
 23 A. \$130,000.  
 24 Q. And that was in one or two payments?  
 25 A. Two payments.

1 Q. And what were you supposed to get out of it?  
 2 A. We were going to split the approximate \$500,000 that  
 3 he estimated was going to be his return.  
 4 Q. Is that a return of actually 630 or just 500, so that  
 5 the total would be 500 minus 130 would your total  
 6 income?  
 7 A. The return would have been half of 500, so  
 8 approximately \$250,000.  
 9 Q. Each?  
 10 A. Each.  
 11 Q. But then you've got to take off the 130 you put into  
 12 it, right?  
 13 A. No.  
 14 Q. I'm trying to understand it. The total return from  
 15 the deal was 500 plus 130?  
 16 A. No.  
 17 Q. The total is 500 to come in.  
 18 A. (Shakes head.)  
 19 Q. Then you and Lupiloff split the 500, 250 each.  
 20 A. Correct.  
 21 Q. But you put in 130.  
 22 A. Yes.  
 23 Q. So what you get out of it is 250 minus 130.  
 24 A. Correct.  
 25 Q. There was an agreement that you signed with him?

1 A. Yes.  
 2 MARKED FOR IDENTIFICATION:  
 3 DEPOSITION EXHIBIT 1  
 4 3:19 p.m.  
 5 BY MR. SCHMIDT:  
 6 Q. Sir, I'll hand you what's marked as Exhibit 1. Is  
 7 that the agreement?  
 8 A. That is.  
 9 Q. And that's signed by -- is that your signature on the  
 10 second page?  
 11 A. Correct.  
 12 Q. Do you recognize that Mr. -- is Gary Harmon and Gary  
 13 Lupiloff the same person?  
 14 A. Yes.  
 15 Q. Is that his signature?  
 16 A. That's his signature as I know it.  
 17 Q. And this Exhibit 1, you've seen this before,  
 18 obviously.  
 19 A. I have seen it.  
 20 Q. And this is the agreement. Is there anything that's  
 21 not the agreement that's written on here? Is there  
 22 anything different about the agreement than what's  
 23 written on here?  
 24 A. No, I think this is the agreement he signed.  
 25 Q. So it says you're supposed to get a hundred percent of

1 the money you advanced back by the end of business on  
 2 February 28th, 2003, correct?  
 3 A. I'm looking from where you're reading.  
 4 Q. Actually, right there.  
 5 A. Yep.  
 6 Q. And it says -- in Paragraph 3, it says, "If by  
 7 December 13, 2002, MAD Advertising has not produced  
 8 contracts equal to or exceeding \$130,000, MAD  
 9 Advertising promises to repay 100 percent of all  
 10 advanced (\$65,000) to Mr. William Keene within 10  
 11 calendars days, (December 23, 2002.)" Correct?  
 12 A. Um-hum.  
 13 Q. That's yes?  
 14 A. Yes.  
 15 Q. If you look on the last page, it says, "MAD  
 16 Advertising also promises to keep the books open  
 17 during this investment. MAD Advertising will allow  
 18 Mr. Keene and his representative, Charles Stevens,  
 19 full access, including, but not limited to financial  
 20 commitments relating to the International Auto Show in  
 21 Detroit for 2003. Contracts committing MAD  
 22 Advertising to their clients, to provide them  
 23 advertising space on their LED Wall Screens, accounts  
 24 payable and receivable considering only with the  
 25 International Auto Show in Detroit for 2003."

1 Is that part of the agreement?  
 2 A. Yes.  
 3 Q. Did you look at the books as of, going back to the  
 4 first page, as of December 13 to see if there had been  
 5 contracts produced?  
 6 A. I did not look at Mr. Lupiloff's books.  
 7 Q. You looked at no books, correct?  
 8 A. No.  
 9 Q. Correct?  
 10 A. Correct.  
 11 Q. Why not?  
 12 A. Mr. Lupiloff showed me documentation making me think  
 13 that he had contracts in order with some companies  
 14 that I recognized the names of. And that's what he  
 15 showed me.  
 16 Q. Okay. If you look on that first page, under C it  
 17 says, "If \$130,000 has been invested by Mr. Keene to  
 18 MAD Advertising, MAD Advertising promises to pay  
 19 Mr. Keene in the following manner: An additional  
 20 \$115,000, if paid within 30 days of February 28th,  
 21 2003. The additional \$115,000, plus ten percent on  
 22 any remaining balance accumulating every 30 days. If  
 23 final payment is not received before July 28th, 2003,  
 24 MAD Advertising will be in breach of this agreement  
 25 and Mr. Keene will have the right to seek any and all



1 recourse."

2 Do you remember that as part of the

3 agreement?

4 A. Yes.

5 MARKED FOR IDENTIFICATION:

6 DEPOSITION EXHIBIT 2

7 3:23 p.m.

8 BY MR. SCHMIDT:

9 Q. Exhibit 2 is -- it says -- it's December 30, MAD

10 Advertising. "We have received \$65,000 from William

11 Keene on this date for further funding."

12 Is that your signature on there?

13 A. Yes.

14 Q. That's the second payment, isn't it?

15 A. Correct.

16 Q. Do you have any proof of the first payment?

17 A. I don't know if I have a document to show, except that

18 this one stating this money represents the balance

19 due.

20 Q. Do you have a canceled check or any proof at all of

21 the first payment other than Exhibit, what you just

22 said about Exhibit 2?

23 A. I do not.

24 Q. Do you have a canceled check or any proof of the

25 second payment other than Exhibit 2?

1 A. I don't know. I'll have to look. As a matter of

2 fact, I'll look for both.

3 Q. We already asked for that, It wasn't produced. So you

4 recall you've already looked for it. Did you not find

5 it?

6 A. I don't think I have it.

7 Q. You have indicated in your discovery responses that

8 you made a second loan to Lupiloff -- I'm sorry, maybe

9 I should say -- we'll call this deal the first loan,

10 but then you made a second loan of \$2,500 on 10-6-03;

11 do you recall doing that?

12 A. I believe so.

13 Q. And what was that for?

14 A. To help Gary.

15 Q. For what?

16 A. He needed it to help his business.

17 Q. Anything to do with his first deal or something

18 totally different?

19 A. It was to help his business. He told me it was -- he

20 needed some money to help pay his staff, if I remember

21 right.

22 Q. Okay. That's ten months after he's already way past

23 paying you all this hundreds of thousands of dollars

24 under Exhibit 1, isn't it?

25 A. Yes, it is.

1 Q. Why would you loan him more money?

2 A. Gary told me that he was selling his company, and that

3 if he couldn't pay his salespeople, he couldn't sell

4 his company, and assured me that when he sold his

5 company he would pay me back the principal that I had

6 loaned him.

7 Q. Do you have any proof that you loaned Lupiloff \$2,500

8 on 10-6-03?

9 A. I don't think so.

10 Q. You indicated in your interrogatory answers that --

11 you say Lupiloff paid back that \$2,500. Do you

12 remember answering those?

13 A. I believe so.

14 Q. Do you have any proof that he paid the money back?

15 A. No, I don't think so.

16 Q. How did he pay it back?

17 A. I believe he gave me a check.

18 Q. You don't have a copy of the check.

19 A. I don't believe I have a check from 2003, no.

20 Q. How did you pay him the 2,500 bucks?

21 A. I don't remember.

22 Q. You don't recall if it was cash or a check?

23 A. Not off the top of my head.

24 Q. Looking through all the documents you produced, there

25 was no entry in any of your accounts or any bank entry

1 or anything showing a \$2,500 check to Lupiloff.

2 Are you aware of any check to Lupiloff?

3 A. Just personally, I know I loaned him the money.

4 Q. Then you say in your interrogatory answers that you

5 made a third loan to Lupiloff on July 17, '07 for

6 6,000 bucks?

7 A. That sounds about right.

8 Q. And that's after he's now been five years owing you

9 for Exhibit 1. Why would you loan him more money in

10 July of '07?

11 A. I was helping him.

12 Q. What was helping him this time?

13 A. I don't remember him telling me why he needed it. I'm

14 sure it had something to do with his business. And,

15 again, he was working hard to sell his company and

16 assured me that he would pay me the principal once the

17 company was sold.

18 Q. Well, he told you he was selling the company back in

19 '03.

20 A. Um-hum.

21 Q. So this is four years later. He's still trying to

22 sell it?

23 A. Still trying to sell it.

24 Q. So the 2,500 bucks, that was supposed to keep him

25 going for four years?



1 A. No. I think he was just short for that month.  
 2 Q. You say in the interrogatory answers that he paid the  
 3 \$6,000 back?  
 4 A. Yes.  
 5 Q. Do you have any proof -- first of all, do you have any  
 6 proof that you paid him \$6,000?  
 7 A. I don't know.  
 8 Q. Well, nothing you produced, there's no record or bank  
 9 record or check or any credit card or any reference in  
 10 what you produced. Are you aware of anything that's  
 11 in writing to show that you paid him 6,000 bucks?  
 12 A. If you don't have it in your documentation, then I  
 13 don't have it.  
 14 Q. Well, are you aware of anything?  
 15 A. Not off the top of my head, no.  
 16 Q. Are you aware of any proof of Lupiloff paying you the  
 17 \$6,000 back?  
 18 A. No, I don't believe I have any proof that he paid me  
 19 back.  
 20 Q. Do you know how you paid him the 6,000 bucks? Was it  
 21 cash, check, or don't you know?  
 22 A. I don't know.  
 23 Q. Did Lupiloff give you any checks to pay off the deal,  
 24 Exhibit 1?  
 25 A. He did give me a check to pay off part of loan one.

1 Q. And what happened to that?  
 2 A. It was a \$20,000 bounced check.  
 3 Q. And what did you tell Lupiloff when you got the  
 4 \$20,000 bad check?  
 5 A. I told him it bounced.  
 6 Q. Then what?  
 7 A. I don't remember.  
 8 Q. Did you threaten him with any criminal proceedings out  
 9 of that?  
 10 A. No.  
 11 Q. When you told him it bounced, what did he say?  
 12 A. He assured me that he would pay me my investment back  
 13 with proceeds from the Woodward Dream Cruise that was  
 14 six months later.  
 15 Q. When did the idea or the issue of buying a life  
 16 insurance policy come up?  
 17 A. I don't know.  
 18 Q. Who brought that idea up?  
 19 A. Gary brought it up.  
 20 Q. And how did he bring it up to you?  
 21 A. I don't remember exactly what was said, he just said  
 22 he would give me a life insurance policy.  
 23 Q. Well, what was the rationale for that?  
 24 A. You'd have to ask Gary.  
 25 Q. Well, what did you understand the rationale to be?

1 A. I understood it was to cover his debt to me.  
 2 Q. But it can only cover his debt if he's dead, right?  
 3 A. If something happened to him, correct.  
 4 Q. So what good does that do you if he's 46 years old and  
 5 in excellent health, how is that a benefit to you?  
 6 A. It's just an insurance policy, it covers in case of an  
 7 accident.  
 8 Q. Well, it only covers if he's dead, right?  
 9 A. I think you said that already.  
 10 Q. But you said an accident. He can't get in an accident  
 11 and get the money, he's got to be dead, right?  
 12 A. Correct.  
 13 Q. You're saying that it was Lupiloff's idea for him to  
 14 get this life insurance policy on his life?  
 15 A. I believe so.  
 16 MARKED FOR IDENTIFICATION:  
 17 DEPOSITION EXHIBIT 3  
 18 3:34 p.m.  
 19 BY MR. SCHMIDT:  
 20 Q. I'll hand you, sir, what I marked as Exhibit 3. This  
 21 is Defendant, William Keene's, Supplemental Answers to  
 22 Interrogatories and Requests to Produce from  
 23 Nationwide.  
 24 And if you look at the question, it says,  
 25 "In regard to the purpose of the Nationwide policy, as

1 indicated on the New Account/Suitability Form, to  
 2 provide coverage over an investor loan" --  
 3 A. I'm sorry, where are you reading again?  
 4 Q. (Indicating.)  
 5 A. Number 2?  
 6 Q. Yes.  
 7 A. Okay.  
 8 Q. "In regard to the purpose of the Nationwide policy, as  
 9 indicated on the New Account/Suitability Form, 'to  
 10 provide coverage over an investor loan for capital  
 11 purchase.' Please state with factual precision.  
 12 Please state how the policy was to provide  
 13 coverage over an investor loan for capital purchase."  
 14 "ANSWER: The capital loan was for \$130,000  
 15 and was to cover the \$245,000 that was to be paid by  
 16 MAD Advertising. William Keene loaned \$130,000 to  
 17 Gary Lupiloff, which Lupiloff received as MAD  
 18 Advertising. Lupiloff originally agreed to repay the  
 19 loan, but when he failed to do so, Keene offered to  
 20 purchase a life insurance policy that is at issue."  
 21 Is that answer incorrect or correct?  
 22 MR. BREDELL: Well, you asked whose idea it  
 23 was, you didn't ask about who purchased it. That's a  
 24 different question.  
 25 BY MR. SCHMIDT:

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- 1 Q. It says in the answer, "Keene offered to purchase the  
2 life insurance policy that is at issue."  
3 Is that correct or not?  
4 A. Mr. Schmidt, you have to be a little more specific  
5 with regard to your question.  
6 Q. Okay. I read you the question in the interrogatory  
7 and I read you the answer. The question -- if you  
8 want me to read it again, I'll read it to you, but  
9 it's right in front of you. There's the question,  
10 2-A, and there's the answer.  
11 A. Um-hum.  
12 Q. It says, "Lupiloff originally agreed to repay the  
13 loan, but when he failed to do so Keene offered to  
14 purchase the life insurance policy that is at issue."  
15 Is that true or false?  
16 A. Well, I did offer to pay -- no, that's not correct.  
17 Q. And what's not correct about it?  
18 A. Mr. Lupiloff took out the policy. He paid for the  
19 policy for a number of years, and when he could not  
20 pay the policy any more, he asked me to pay the  
21 premiums, which is offered to purchase the life  
22 insurance policy that's at issue.  
23 Q. Okay. What you just said is not what's written down  
24 on Exhibit 3, is it? Exhibit 3 says nothing about --  
25 A. No.

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- 1 Q. -- Lupiloff coming up with the idea and Lupiloff  
2 paying for it and then sometime later you started to  
3 pay for it, the answer to 2, sub A, on Exhibit 3 says,  
4 "The capital loan was for \$130,000 and was to cover  
5 the \$245,000 that was to be paid by MAD Advertising.  
6 William Keene loaned \$130,000 to Gary Lupiloff."  
7 Okay. That's correct so far, isn't it?  
8 A. That's correct.  
9 Q. And then it says, "Which Lupiloff received as MAD  
10 Advertising."  
11 That's correct, isn't it?  
12 A. Yes.  
13 Q. It says, "Lupiloff originally agreed to repay the  
14 loan."  
15 Is that correct?  
16 A. That is correct.  
17 Q. Then it says, "But when he failed to do so, Keene  
18 offered to purchase the life insurance policy that is  
19 at issue."  
20 Is that correct or not?  
21 A. Mr. Schmidt, there's a time between when one thing  
22 happened and when another thing happened. The  
23 statement is true, but there's a gap in time. So what  
24 I'm saying is correct and what you are saying is  
25 correct.

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- 1 Q. All right. If we look at this Exhibit 3, answer to  
2 2-A, starting with that last sentence, it says,  
3 "Lupiloff originally agreed to repay the loan," and  
4 you said that's correct.  
5 A. Um-hum.  
6 Q. Correct?  
7 And then he failed to do so, and you said  
8 that's correct.  
9 A. Um-hum.  
10 Q. Correct? You have to say yes.  
11 A. Yes. I'm sorry.  
12 Q. And then it says, "Keene offered to purchase the life  
13 insurance policy that is at issue."  
14 That's what's written down there, correct?  
15 Did I read that right, "Keene offered to purchase the  
16 life insurance policy that is at issue"?  
17 A. Mr. Schmidt, you have read that paragraph correctly.  
18 I am not arguing with it. I think I've made myself  
19 very clear that there is a gap in time. I did pay for  
20 the life insurance policy when Gary called me and  
21 said, "Bill, I can no longer pay the premium." So my  
22 statement is correct and your statement is correct.  
23 Q. Okay. Just for the record, it's not my statement,  
24 it's --  
25 A. I understand that, but what you are reading.

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- 1 Q. We both can't talk at once.  
2 Exhibit 3 is your answer to Nationwide's  
3 interrogatory. That's your answer. And I'm not here  
4 to argue --  
5 A. Yes.  
6 Q. And I'm not here to argue with you, I'm just asking a  
7 question about it.  
8 You mentioned this gap in time. There's no  
9 mention of any gap in time in this answer, is there?  
10 A. To answer your question, no, there's no phrase that  
11 says "gap in time."  
12 Q. Okay. Now, I'll hand you this. This was marked as  
13 Reich Exhibit Number 1. And if you look at that first  
14 page, it's entitled, "New Account/Suitability Form."  
15 Do you see that?  
16 A. Yes.  
17 Q. Have you seen this document before?  
18 A. I have never seen this document before.  
19 Q. On the first page and the bottom -- or I should say on  
20 the first page at the top, it says,  
21 "Owner/custodian/trustee; first, MI, last, Gary Harmon  
22 Lupiloff."  
23 Do you see that?  
24 A. I do.  
25 Q. And then it's got, down further, it says, "Employer

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1 name, MAD Advertising and Marketing."  
 2 Do you see that?  
 3 A. Yes.  
 4 Q. Okay. And then underneath it, it says, "Financial  
 5 Information."  
 6 Do you see that?  
 7 A. Yes.  
 8 Q. And it says -- annual income it's checked off, 50 to  
 9 \$100,000.  
 10 Do you see that?  
 11 A. I do.  
 12 Q. Do you know if that's correct or not?  
 13 A. I have no idea.  
 14 Q. Okay. And then below that, it says, "Net worth,  
 15 excluding residence, \$500,000."  
 16 Do you see that?  
 17 A. I do.  
 18 Q. Do you know if that's correct or not?  
 19 A. I have no idea.  
 20 Q. And I guess, to be fair, I should have said the date  
 21 of this. So if you look on the fourth page, it's  
 22 signed by Mr. Lupiloff on 11-11-03.  
 23 Do you see that? Let me show you the right  
 24 page. Do you see that?  
 25 A. 11-11-03.

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1 Q. Okay. So going back to the first page, do you know if  
 2 Lupiloff had income of 50 to \$100,000 as of 11-11-03?  
 3 A. Mr. Schmidt, I have no idea.  
 4 Q. And do you know if he had net worth, excluding  
 5 residence, of \$500,000 as of 11-11-03?  
 6 A. No idea.  
 7 Q. And do you know if he had a liquid net worth of  
 8 \$75,000 as of 11-11-03?  
 9 A. I have no idea.  
 10 Q. And then if you look on the next page, it says the  
 11 section Life Insurance Analysis.  
 12 Do you see that?  
 13 A. Yes.  
 14 Q. It says total debt, \$500,000.  
 15 Do you see that?  
 16 A. Correct.  
 17 Q. All right. The total debt that you're aware of was  
 18 \$130,000, correct?  
 19 A. I don't know what Gary's total debt was.  
 20 Q. But the total debt, I asked you the total debt that  
 21 you were aware of, per Exhibit 1, you loaned him  
 22 \$130,000.  
 23 A. Mr. Schmidt, this debt is for 245,000, plus ten  
 24 percent on any remaining balance accumulating every  
 25 30 days.

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1 Q. The amount that you loaned him totally was 65,000 plus  
 2 65,000; is that correct?  
 3 A. That's correct.  
 4 Q. Okay. Are you aware of any other debt that  
 5 Mr. Lupiloff had other than to you on Exhibit 1?  
 6 A. I never saw any paperwork that Gary showed me that he  
 7 had any other debt, but in the times that we spoke, he  
 8 said that there were, he had other debts.  
 9 Q. If we look back at Reich Exhibit Number 1, it says --  
 10 do you see where it says, "Total need, \$500,000"?  
 11 A. Yes. Under Life Insurance Needs Analysis?  
 12 Q. Yes. And then it says, "Remaining need, \$500,000."  
 13 Do you see that?  
 14 A. Yes.  
 15 Q. There's an asterisk in front of each of those 500,000.  
 16 Do you see that?  
 17 A. Yes.  
 18 Q. And then below, in the box with the asterisk, it says,  
 19 "To provide coverage over an investor loan for capital  
 20 purchases."  
 21 Do you see that?  
 22 A. Yes.  
 23 Q. Do you know what that's referring to?  
 24 A. No.  
 25 Q. When you discussed with Mr. Lupiloff that, there was

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1 no discussion that he was going to -- that there was  
 2 going to -- obtaining this Nationwide policy had  
 3 something to do with the loan that you gave to him?  
 4 A. Well, that's what he told me he was taking the policy  
 5 out for.  
 6 Q. Okay. If you flip to the last page of Reich Exhibit  
 7 Number 1.  
 8 A. This page?  
 9 Q. Yes, sir.  
 10 MR. BREDELL: Can you read that? Is that  
 11 clear?  
 12 A. I think I can read it.  
 13 BY MR. SCHMIDT:  
 14 Q. It says -- it's dated November 12th, 2003. It says  
 15 Summary Sheet.  
 16 Do you see that?  
 17 A. Yes.  
 18 Q. It says, "Purpose of policy is business related.  
 19 Gary's company, MAD Advertising and Marketing, has  
 20 borrowed a sum of money for capital and the investor  
 21 is requesting Gary to carry this policy to protect the  
 22 loan repayment in the event of Gary's demise."  
 23 Is that phrase that says, "Gary's company,  
 24 MAD Advertising, has borrowed a sum of money for  
 25 capital and the investor is requesting Gary to carry

1 this policy to protect the loan repayment in the event  
 2 of Gary's demise," is that correct or not?  
 3 A. Are you asking me that that's what this document says?  
 4 Q. No, I'm asking you if that is true, that Gary's  
 5 company had borrowed -- did Gary's company borrow a  
 6 sum of money from you?  
 7 A. Yes, he did.  
 8 Q. Okay. And as the investor, did you request Gary to  
 9 carry the policy to protect the loan repayment in the  
 10 event of his demise?  
 11 A. Mr. Schmidt, I've never seen this document before, so  
 12 I have no idea what you're asking me. I don't know  
 13 what this is about. I don't know this document.  
 14 Q. This is a document submitted by the Nationwide agent,  
 15 Mary E. (Betsy) Reich, to issue the Nationwide policy  
 16 that this lawsuit is all about. And on it it says  
 17 what I'm reading you, it says -- and I'm not asking  
 18 you if you saw it. You've already told me you didn't  
 19 see it before, so I understand that.  
 20 I'm just asking you, from this language, it  
 21 says, "Gary's company, MAD Advertising and Marketing,  
 22 has borrowed a sum of money for capital."  
 23 Now, you agree Gary's company, MAD  
 24 Advising, borrowed a sum of money from you.  
 25 A. Yes, they did.

1 Q. Then the next part says, "And the investor is  
 2 requesting Gary to carry this policy to protect the  
 3 loan repayment in the event of Gary's demise."  
 4 My question is, did you, as the investor,  
 5 request Gary to carry the policy to protect the loan  
 6 repayment in the event of Gary's demise?  
 7 A. No.  
 8 Q. If the policy was not being purchased to protect the  
 9 loan repayment in the event of Gary's demise, what is  
 10 it being purchased for?  
 11 MR. BREDELL: That's a different question  
 12 you're asking him. You're asking him why as opposed  
 13 to whose idea it was.  
 14 BY MR. SCHMIDT:  
 15 Q. Is it your understanding that the purpose of the  
 16 policy was to protect the loan repayment in the event  
 17 of Gary's demise?  
 18 A. I don't know why Mr. Lupiloff took out the policy. He  
 19 took the policy out, so --  
 20 Q. I think we discussed earlier, you said there was  
 21 discussions about him taking out the policy to protect  
 22 the investment in the event that Gary died.  
 23 Wasn't that your understanding?  
 24 A. I think you're going to have to rephrase that because  
 25 I'm not following you a hundred percent.

1 Q. The question is: Was it your understanding that the  
 2 policy was being taken out to protect the loan  
 3 repayment in the event of Gary's demise?  
 4 A. Yes, I believe Gary took the policy out to protect the  
 5 debt that he owed to me.  
 6 Q. That purpose does not benefit -- what benefit does  
 7 that purpose give to Gary?  
 8 A. You'd have to ask Gary.  
 9 Q. The person who gets the benefit from that is you. If  
 10 he dies, you get \$500,000, correct?  
 11 A. That's correct.  
 12 Q. So the only person who gets a benefit from this  
 13 transaction of buying this life insurance policy, it  
 14 would be you only if Gary dies; is that correct?  
 15 A. I believe so.  
 16 Q. Then it says, "The initial loan amount was for more  
 17 than \$500,000, yet the amount has now decreased to  
 18 approximately this amount at this time."  
 19 Is that correct or not?  
 20 A. Mr. Schmidt, I didn't write this, but I don't know  
 21 exactly what the initial loan amount is that we're  
 22 talking about. The initial loan amount -- the  
 23 investor is listed as me, but I didn't write this.  
 24 Q. I understand you didn't write this.  
 25 A. So there might be more than one investor that Gary

1 owed money to. I don't really know.  
 2 Q. Are you aware of anybody that this policy concerned  
 3 other than you? There's no other beneficiary named  
 4 other than you, correct?  
 5 A. Well, at the time he took it out I believe his  
 6 daughters were listed as --  
 7 Q. Contingent.  
 8 A. -- contingent.  
 9 Q. You were the first beneficiary, correct?  
 10 A. Correct.  
 11 Q. So if Mr. Lupiloff died, you're the first one in line.  
 12 A. That's correct.  
 13 Q. All right. So my question is, once again I'm not --  
 14 A. I understand.  
 15 Q. -- saying you seen this before, I'm just asking you,  
 16 this sentence, "The initial loan amount was for more  
 17 than \$500,000." Is that true or not?  
 18 A. I don't believe that was true.  
 19 Q. Okay. And then the second part of it, it says, "Yet  
 20 the amount has now decreased to approximately this  
 21 amount at this time."  
 22 That's not true either, is it?  
 23 A. In my understanding, that doesn't seem to be true.  
 24 Q. It's wrong.  
 25 A. I didn't write this, so --

1 Q. I understand that.  
 2 A. -- and I don't the legalese of whoever wrote this. So  
 3 I don't know if there's more to this document.  
 4 Q. I'm just asking you what's written there.  
 5 It says, "The investor, William Keene, will  
 6 show as the primary beneficiary, with the verbiage  
 7 ATIMA, with the balance of death benefit at any time  
 8 to go to the secondary beneficiaries, which are Gary's  
 9 daughters."  
 10 Is that your understanding of what the  
 11 policy was supposed to do?  
 12 A. I don't know what ATIMA stands for.  
 13 Q. As their interest may appear.  
 14 A. I'm sorry, I don't understand what that phrase means.  
 15 Q. All right. As far as the part, "The investor, William  
 16 Keene, will show as the primary beneficiary," you  
 17 understand that was correct?  
 18 A. Correct.  
 19 Q. And it says, "The balance of the death benefit to go  
 20 to the secondary beneficiaries, which are Gary's  
 21 daughters," was that your understanding?  
 22 A. It wasn't to my understanding, because I've never seen  
 23 this document before.  
 24 Q. You were aware, when the policy was issued, that you  
 25 were the primary beneficiary, correct?

1 A. That's what I was told.  
 2 Q. And you were aware of the policy issued that  
 3 Lupilloff's daughters were the contingent  
 4 beneficiaries.  
 5 A. Yes.  
 6 Q. "William Keene is paying the first estimated quarterly  
 7 payment to buy the policy." Is that correct?  
 8 A. I don't really remember if that's the case.  
 9 Q. Pardon me?  
 10 A. I don't remember if I paid it.  
 11 Q. Did you meet this Mary Betsy Reich at the time this  
 12 policy was issued?  
 13 A. I don't remember.  
 14 Q. I'll show you what we've marked as Reich Exhibit 2,  
 15 it's a two-page document. Have you ever seen that  
 16 before?  
 17 A. I don't remember ever seeing this document.  
 18 MR. DANZIG: What's it entitled?  
 19 MR. BREDELL: New Accounts/Suitability Form  
 20 Addendum.  
 21 BY MR. SCHMIDT:  
 22 Q. And attached to it is a copy of Mr. Lupilloff's  
 23 driver's license; is that correct?  
 24 A. That's what it looks like.  
 25 Q. But you've never seen that before?

1 A. Never.  
 2 Q. I'm going to hand you what was previously marked as  
 3 Reich Exhibit Number 3.  
 4 This is an application for a life insurance  
 5 policy submitted by Mr. Lupilloff. Do you see his name  
 6 on the first page there?  
 7 A. I do.  
 8 Q. Okay. And if you look on the last page, it's signed  
 9 by Mr. Lupilloff on 11-11-03?  
 10 A. It looks like his signature, yes.  
 11 Q. If you look on Page 3, which at the bottom has 0239 at  
 12 the bottom of it.  
 13 A. Um-hum.  
 14 Q. It's got down, "Beneficiary, William Keene/ATIMA."  
 15 Do you see that?  
 16 A. Yes.  
 17 Q. And then it says, "Relationship to insured, partner  
 18 (business)." Do you see that?  
 19 A. I do.  
 20 Q. Is that correct?  
 21 A. I don't know what my title would be.  
 22 Q. Would you consider yourself as a business partner of  
 23 Lupilloff?  
 24 A. I don't know what I would designate as my title.  
 25 Q. Well, is partner (business) wrong or right?

1 A. I didn't write this, so I don't know if it's right or  
 2 wrong.  
 3 Q. It says, "William Keene/ATIMA." You asked me about  
 4 that before.  
 5 Do you recall discussions made that the  
 6 policy would pay you whatever -- if Lupilloff died, the  
 7 policy would pay you whatever Lupilloff owed you at the  
 8 time and the rest of the money would go to the  
 9 contingent beneficiaries; do you recall any discussion  
 10 about that?  
 11 A. I don't remember ever having any sort of discussion  
 12 about that.  
 13 Q. Okay. On that Page 3, Page 0239, it has down as -- it  
 14 has the name of Monica Lynne Lupilloff, do you see  
 15 that, daughter?  
 16 A. Yes.  
 17 Q. And Nicole Renee Lupilloff, daughter?  
 18 A. Yes.  
 19 Q. And you were aware at the time of the policy that they  
 20 were going to be contingent beneficiaries?  
 21 A. Yes.  
 22 Q. If you look on the next page, Page 4, it says --  
 23 there's some questions there, personal information.  
 24 Question number F, "Have you ever been charged with a  
 25 violation of any criminal law," and he checked that

1           yes; do you see that?

2     A.   Yes.

3     Q.   And it says F, and underneath it it says, "Gary Harmon

4         Lupiloff, 1998 federal bank fraud, one count."

5           Do you see that?

6     A.   I do.

7     Q.   Were you aware of that at that time?

8     A.   No, I wasn't.

9     Q.   When did you first become aware of that?

10    A.   After Gary was shot.

11    Q.   And how did you find out?

12    A.   It was on the television.

13    Q.   So you first saw it by seeing it on t.v. after he was

14         killed?

15    A.   Yes, I believe so.

16    Q.   And then if you look at above there, small G, it has,

17         "Have you had any bankruptcies in the past seven years

18         or have any suits or judgements pending," that's

19         checked yes; do you see that?

20    A.   What letter again?

21    Q.   F. I'm sorry, G.

22    A.   Okay.

23    Q.   All right. And then at the bottom it says, "Gary

24         Harmon Lupiloff, 2001, Civil Action 01-036655-CZ,

25         settled."

1           Were you aware of any suits against him?

2     A.   No, I wasn't.

3     Q.   And then on the next page, Page 5, it's got answers to

4         a bunch of medical questions, and Lupiloff answered

5         all of those in the negative. Do you see all those?

6         Whether he had AIDS, whether he had heart disease,

7         headaches, seizures, epilepsy, asthma, emphysema,

8         colitis, ulcer, sugar problems, diabetes, cancer,

9         arthritis, alcoholism, any disease or disorder of the

10        eyes, ears, nose or throat; do you see those are all

11        answered no?

12    A.   I see they're all no except this one, 16-A.

13    Q.   Yes, we'll get down to that.

14           Then the next section, we've got 16-A,

15         there's four questions, and the first one, "Have you

16         consulted or have you been examined by a physician,

17         chiropractor or medical practitioner or been in any

18         hospital," and the answer to that one is "yes."

19           Do you see that?

20    A.   Yes.

21    Q.   And the other three under that, had any diseases or

22         operation not disclosed, any x-rays,

23         electrocardiograms not disclosed, been medically

24         advised to have any surgery, ablation, those are all

25         answered no, correct?

1     A.   Correct.

2     Q.   But the one that's answered yes, he's got a note at

3         the bottom for 16-A, and it says, "Dr. L. Scott --

4         A.   Grant.

5     Q.   -- "Grant, check-up and prescription for cough."

6           Do you see that?

7     A.   Yes.

8     Q.   So you've never seen this document before, correct?

9         Or have you?

10    A.   I believe it was in a set of documents that came to my

11         attorney's office.

12    Q.   So after this lawsuit was filed.

13    A.   After the lawsuit, yeah.

14    Q.   But this information that we just went through, where

15         Lupiloff is saying he's got no health problems at all

16         and that he's 46 years old at the time this policy is

17         being issued, do you have any information that's to

18         the contrary to that?

19    A.   No.

20    Q.   Do you have any information that he wasn't 46 years

21         old?

22    A.   No.

23    Q.   Do you have any information that he had any health

24         problems?

25    A.   No.

1     Q.   As far as you know, he was in perfect health.

2     A.   We never talked about his health.

3     Q.   Well, were you aware of anything that he was not in

4         perfect health?

5     A.   No.

6     Q.   I'm going to show you, this is Reich Exhibit Number 4.

7         That's the policy.

8     A.   Um-hum.

9     Q.   Have you ever seen the policy before, sir? This is --

10        that's a bad question.

11           For the record, this is the Nationwide

12         Guaranteed Term Life Insurance Policy issued to Gary

13         Lupiloff on November 11th, 2003.

14           Have you seen this before?

15    A.   Mr. Schmidt, I have seen this, I received it after

16         Gary was shot.

17    Q.   So the first time you ever saw it was after -- after

18         Lupiloff's death.

19    A.   That's right.

20           MR. DANZIG: Is that Exhibit 4 from Reich?

21           MR. SCHMIDT: It's Exhibit 4 from Reich.

22           MR. DANZIG: Thank you.

23    BY MR. SCHMIDT:

24    Q.   If you look, sir, on Page -- at the bottom, there's

25         Bates numbers, Page 303 in the bottom right corner.



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1 A. Yes.  
 2 Q. That says that the owner, Gary Lupiloff, do you see  
 3 that?  
 4 A. Yes.  
 5 Q. Age of insured 46; do you see that?  
 6 A. Yep.  
 7 Q. Premium annual \$1,030?  
 8 A. Yes.  
 9 Q. And then it says, at the bottom it says, "Ten year  
 10 level guaranteed term life insurance to age 95, \$1,030  
 11 payable to the year 2013."  
 12 Do you see that?  
 13 A. Yes.  
 14 Q. Was it your understanding that the policy would cost  
 15 \$1,030 per year from the date it was issued in 2003,  
 16 for ten years until 2013?  
 17 A. No.  
 18 Q. You weren't aware of that?  
 19 A. I wasn't aware of it.  
 20 Q. If you look on Page 304, that's a listing of -- do you  
 21 see where it says policy year age, guaranteed premium;  
 22 do you see that?  
 23 A. Yes.  
 24 Q. And do you see the first ten years is \$1,030 per year?  
 25 A. Yes.

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1 Q. And then it goes up to, in year 11, it goes up 11  
 2 times to 11,800?  
 3 A. Yes.  
 4 Q. And then it keeps going up after that; do you see  
 5 that?  
 6 A. Yes.  
 7 Q. Do you know what Mr. Lupiloff's life expectancy was  
 8 when he was age 46?  
 9 A. Mr. Schmidt, I'm not in the insurance business so I  
 10 have no idea.  
 11 Q. Just assume, for the sake of my question, that his  
 12 life expectancy, when he was 46, was 77 years.  
 13 A. Yes.  
 14 Q. And assuming, if you add up all those numbers from  
 15 year one to year 32, do you have any idea what it  
 16 would cost to pay the premiums for that policy for his  
 17 expected life when it was issued?  
 18 A. No.  
 19 Q. If I told you that number would be \$915,515, would  
 20 that shock you?  
 21 A. No.  
 22 Q. Why not?  
 23 A. Because I had seen this document after Gary was shot  
 24 and I see how much it would cost in premiums.  
 25 Q. As a business person, as a college grad, as a real

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1 estate salesperson, as of November of 2003 would you  
 2 have any understanding that it would make any business  
 3 or economic sense whatsoever to have a policy like  
 4 this in effect for somebody who's 46 years old and in  
 5 perfect health?  
 6 A. Mr. Schmidt, I've never seen this document, so I had  
 7 no idea at all that the premiums were ever going to  
 8 increase more than the thousand or so dollars that it  
 9 cost.  
 10 Q. Okay. As of going back to November of 2003, not as of  
 11 today, but what you knew then, did you know what a  
 12 term life policy was versus a whole life policy?  
 13 A. I had a general idea.  
 14 Q. All right. Do you know that a term life policy is one  
 15 that's going to have initially real cheap premiums,  
 16 but then after a certain number of years the premiums  
 17 go way, way up higher?  
 18 A. I never thought about it.  
 19 Q. Were you aware that that's what existed at that time?  
 20 A. Are you asking me if I was aware of Mr. Lupiloff's  
 21 policy?  
 22 Q. No. I'm asking you if back in November of 2003, if  
 23 you were aware that there was such a thing out there  
 24 as a term insurance policy that you could buy for a  
 25 relatively cheap amount of money, for someone who's,

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1 you know, even up to their mid 40's or mid 50's, but  
 2 it's only going to be cheap for a limited period of  
 3 time, maybe five or 10 or 15 years, and from then the  
 4 premiums go way, way up; were you aware of that?  
 5 A. No idea.  
 6 Q. Did you have any life insurance back in 2003?  
 7 A. No.  
 8 Q. Have you ever had life insurance?  
 9 A. I do now.  
 10 Q. When did you first get life insurance?  
 11 A. Three years ago.  
 12 Q. Is it a guaranteed -- I'm sorry, is it a term policy  
 13 or a whole life policy?  
 14 A. It is a term policy.  
 15 Q. Okay. Now, I'm not asking you -- you've said you  
 16 don't know anything about this policy and hadn't seen  
 17 it until after Mr. Lupiloff was dead. But I'm asking  
 18 you as a business college graduate, business person,  
 19 real estate person, as of 2003 would it make any  
 20 economic sense whatsoever for someone to have a term  
 21 policy like this, for someone who's age 46 and in  
 22 perfect health, and continue paying premiums on that  
 23 until the person is to their expected life expectancy  
 24 or they die at 77 years old?  
 25 A. I've really never given it any thought.

1 Q. So you don't think that paying 915,000 for a \$500,000  
2 policy is okay or not?

3 MR. BREDELL: Well, objection. You're  
4 asking him what he knew then and he's told you he  
5 didn't know that, so your question is unfair. It's  
6 like are you still beating your wife. I mean, he said  
7 he didn't know that. And now you've imputed the  
8 knowledge to him and now you're asking him if it makes  
9 any sense.

10 Do you know want to know whether it made  
11 sense then or --

12 MR. SCHMIDT: No, I'm asking him a  
13 different question. He said he didn't know about the  
14 term policy, and now I'm asking him based on the fact  
15 that a term policy would cost \$915,000 to go to a  
16 46-year-old's expected life expectancy, do you feel  
17 that would make any economic sense whatsoever.

18 MR. BREDELL: With what he knows now.

19 MR. SCHMIDT: No, no, with what he knew  
20 then.

21 MR. BREDELL: Well, he didn't know that  
22 then. You said would it make sense to pay \$900,000  
23 for a \$500,000 policy, but he didn't know that then.

24 MR. SCHMIDT: First of all, I object to  
25 your speaking objection. I'm not arguing with you.

1 someone to buy a life insurance policy and my answer  
2 was absolutely.

3 Q. That's not what I asked you, sir. My question was  
4 based on your experience in November of 2003, does it  
5 make economic sense to buy a term life policy, with a  
6 \$500,000 face value, for someone who's 46 years old  
7 and in perfect health, with a policy that's intended  
8 to protect a loan of \$500,000, when the person is in  
9 perfect health, and in order to keep that policy in  
10 effect for an expected life expectancy will cost  
11 \$915,000; based on each one of those facts, don't  
12 discard any one of those, but for each one of those  
13 facts do you feel that it makes any economic sense or  
14 not?

15 A. I really don't know how to answer that question.

16 Q. And why don't you know how to answer that?

17 A. Because it seems to me like there are too many  
18 variables that you are asking.

19 Q. Tell me the variable that you want to eliminate.

20 A. If you were to -- sorry, Mr. Schmidt, I don't -- I  
21 can't help with your question. I'm not following your  
22 question.

23 Q. Okay.

24 A. You're asking me a question about economics and is  
25 life insurance a good idea or a bad idea. I'm sorry,

1 BY MR. SCHMIDT:

2 Q. What my question is -- this is a separate and new and  
3 distinct question from the prior question.

4 Based on your experience in 2003, would it  
5 make any economic sense to buy a term policy for  
6 someone who's 46 years old and in perfect health, with  
7 no health conditions, to buy a term policy that's  
8 going to cost \$915,000 for that person's expected life  
9 expectancy?

10 A. My thought, Mr. Schmidt, is it's a very intelligent  
11 thing for Mr. Lupilloff or anyone to buy life insurance  
12 depending on what their needs are.

13 Q. That's not my question. My question is a specific  
14 question, it was does it make any economic or business  
15 sense, for someone with your understanding in November  
16 of 2003, for a 46-year-old person to buy a term  
17 policy, for the \$500,000 face value, the person is in  
18 perfect health, and it's supposed to be to guarantee a  
19 loan, when the premiums are going to cost \$915,000 for  
20 that person's expected life expectancy?

21 A. Absolutely.

22 Q. And why is that?

23 A. I think every situation is going to be different, so I  
24 don't know how to answer your question. You asked me  
25 a question, if I thought it was a good idea for

1 I don't know the answer to that.

2 MR. DANZIG: Michael, whenever you're ready  
3 to move on to a different subject, can we stop for a  
4 second?

5 MR. SCHMIDT: Sure. We can stop right now.

6 (Off the record at 4:16 p.m.)

7 (Back on the record at 4:33 p.m.)

8 MARKED FOR IDENTIFICATION:

9 DEPOSITION EXHIBIT 4

10 4:33 p.m.

11 BY MR. SCHMIDT:

12 Q. Sir, I'll hand you Exhibit 4.

13 A. Okay.

14 Q. Have you seen that before?

15 A. Okay.

16 Q. Does that refresh your memory that you paid the first  
17 premium payment on 11-12-03 for \$200 to Nationwide?

18 A. That would make sense, yeah.

19 Q. That's your check, right?

20 A. Yeah, that's my check, that's my writing.

21 Q. It's made out to Nationwide, at the bottom left corner  
22 it says for -- I can't read that -- Gary Harmon?

23 A. Yeah, for Gary Harmon.

24 Q. Now, just so we get this straight on the record, Gary  
25 Harmon is that another name for Gary Lupilloff?



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- 1 A. Correct.
- 2 Q. Do you recall that you paid the first premium?
- 3 A. Well, I don't know if the \$200 covers the whole
- 4 premium, but I paid \$200.
- 5 Q. Towards the first premium?
- 6 A. Um-hum.
- 7 Q. That means yes?
- 8 A. Yes.
- 9 MARKED FOR IDENTIFICATION:
- 10 DEPOSITION EXHIBIT 5
- 11 4:34 p.m.
- 12 BY MR. SCHMIDT:
- 13 Q. I'll hand you Exhibit 5, sir. If you look at the
- 14 second page of it, it's entitled, "Application for
- 15 Change of Beneficiary Designation."
- 16 Do you see that?
- 17 A. I do.
- 18 Q. And that's a three-page document?
- 19 A. I don't know how many pages it is.
- 20 Q. Well, Page 170 is the first page of it, 171 is the
- 21 second and 172 is the third.
- 22 A. Okay.
- 23 Q. Do you see that?
- 24 A. Yes, I see it.
- 25 Q. Do you recall there being a change of beneficiary for

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- 1 the policy?
- 2 A. I do.
- 3 Q. And as you understand it, the beneficiary, you
- 4 remained as the primary beneficiary and your wife
- 5 became the contingent beneficiary?
- 6 A. That's right.
- 7 Q. In place of the two Lupiloff daughters?
- 8 A. That's right.
- 9 Q. And why was that?
- 10 A. At this time I became the owner of the policy. And I
- 11 figured if I'm going to pay for it, I might as well
- 12 put my wife down as the contingent beneficiary.
- 13 Q. Okay. And if you look on that document, Page 170,
- 14 it's got, "Full name, William Keene. Relationship to
- 15 insured, business. Relationship on file."
- 16 Do you see that?
- 17 A. Yeah.
- 18 Q. Okay. Do you recall that discussion with the agent
- 19 about the fact that your relationship to Lupiloff was
- 20 that you had a business relationship, was how you were
- 21 related to the policy?
- 22 A. Yes.
- 23 Q. If you look on Page 171, if you know, is that
- 24 Lupiloff's signature?
- 25 A. I believe so.

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- 1 Q. To your knowledge, Lupiloff agreed to change the
- 2 beneficiary?
- 3 A. He must have.
- 4 Q. If you look on that document to Page 175.
- 5 A. Yes.
- 6 Q. That's a change of -- Application for Designation of
- 7 Owner and/or Contingent Owner; do you see that?
- 8 A. Yes.
- 9 Q. And you mentioned a few minutes ago that you became
- 10 the owner?
- 11 A. Yes.
- 12 Q. And is that your signature on that document, 175 at
- 13 the bottom left?
- 14 A. Yes.
- 15 Q. Is that Mr. Lupiloff's signature?
- 16 A. Yes.
- 17 Q. And that's based on what you said before, is you were
- 18 paying the premiums?
- 19 A. Correct.
- 20 Q. So you wanted to be the owner?
- 21 A. Correct.
- 22 Q. Why were you paying the premiums?
- 23 A. Gary called me and said he couldn't afford the policy
- 24 any more and wanted to know if I wanted to take
- 25 ownership of it.

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- 1 Q. Is the effective date of this April -- this document,
- 2 changing ownership, is signed April 4, '07.
- 3 Do you see that?
- 4 A. I do see that.
- 5 Q. Let me show you this document. Why don't we mark
- 6 this.
- 7 MARKED FOR IDENTIFICATION:
- 8 DEPOSITION EXHIBIT 6
- 9 4:38 p.m.
- 10 BY MR. SCHMIDT:
- 11 Q. Exhibit 6 is a letter from Nationwide to you, and that
- 12 says -- it's dated June 18, '07. It says, "The
- 13 ownership designation form signed on April 7, '07 has
- 14 been recorded with our home office, effective the date
- 15 it was signed by the previous owner."
- 16 So do you recall receiving that letter?
- 17 A. I don't recall it.
- 18 Q. Do you have any information that that's incorrect,
- 19 that you became the owner of the policy as of 4-7-07?
- 20 A. I believe I may have gotten this letter, it looks
- 21 familiar, but -- and I had, I believe I had this in my
- 22 file.
- 23 Q. Okay. But, I mean, this letter --
- 24 A. Yes.
- 25 Q. -- this letter, Exhibit 6, is saying that as of

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1 4-7-07, you, William Keene, became the owner of that  
2 policy.

3 Do you have any information to the  
4 contrary?

5 A. No.

6 MARKED FOR IDENTIFICATION:  
7 DEPOSITION EXHIBIT 7

8 4:40 p.m.

9 BY MR. SCHMIDT:

10 Q. I'm going to show you Exhibit 7. Sir, that's that  
11 6-21-07 letter from Nationwide to you?

12 It says, "The ownership designation form  
13 signed on 4-7-07 has been recorded with our home  
14 office effective the date it was signed by the  
15 previous owner. Attached is the copy of the transfer  
16 of ownership form that we have recorded. Please  
17 accept this letter as confirmation that it has been  
18 recorded."

19 Do you see that?

20 A. I do.

21 Q. Do you recall getting that?

22 A. I don't recall getting it.

23 Q. That's the same information that you were given in  
24 Exhibit 6, that as of 4-7-07 you're the owner, right?

25 A. Yes.

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1 A. No.

2 Q. What did you understand you were paying?

3 A. I thought I was going to be paying \$1,000,  
4 approximately, a year up until Gary passed away.

5 Q. And who told you that?

6 A. Nobody. That's what I assumed.

7 Q. Did you get a copy of the policy?

8 A. I only got a policy after Gary was shot.

9 Q. Did you ever ask anybody what their premiums were?

10 A. No.

11 Q. How did you have this number that you assumed what it  
12 was?

13 A. When I received the bills in the mail every six  
14 months, it's listed on the bill.

15 Q. According to your interrogatory answer, you said  
16 that -- we asked you how many of these premium  
17 payments you made. In response to Interrogatory  
18 Number 6, you said, "It is Mr. Keene's memory that he  
19 made two, possibly more payments on a policy while the  
20 policy was still in Mr. Lupilloff's name. Mr. Keene is  
21 checking his bank records to try to locate these  
22 payments."

23 Does that sound right to you, that you  
24 might have made two before you changed over?

25 A. Yes, I remember helping Gary pay his policy amount,

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1 MARKED FOR IDENTIFICATION:  
2 DEPOSITION EXHIBIT 8  
3 4:41 p.m.

4 BY MR. SCHMIDT:

5 Q. I'll hand you Exhibit 8, sir. That's a 10-9-07 letter  
6 from Nationwide to you, and it says, "Please accept  
7 this letter as confirmation that the payor on the  
8 above life policy has updated to the policy owner,  
9 William Keene."

10 Do you see that?

11 A. Yes, I do.

12 Q. And you agree that is correct, that you knew as of  
13 10-9-07 you were paying the premiums?

14 A. I believe I do.

15 Q. Do you know what the premiums were?

16 A. I think they were 400 and some dollars every six  
17 months.

18 Q. Reich Exhibit 4 is the policy. Page 304, that lists  
19 the premiums. As of 10-4-07 you were paying the  
20 premiums, and if we look at that Reich Exhibit 4,  
21 Page 304, that lists the premiums per year.

22 Do you see that?

23 A. I do.

24 Q. You understood at that time that's what you'd be  
25 paying per year?

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1 but I don't remember how many. I thought maybe I may  
2 have paid a second one, but I have not found any  
3 records to show that.

4 Q. All right. And then as of this October -- well, you  
5 took over in April of '07. After that time you paid  
6 every premium, correct?

7 A. Yes.

8 Q. Up until Mr. Lupilloff died.

9 A. That's correct.

10 Q. And you were paying \$272.95 per quarter; does that  
11 sound right?

12 A. That sounds about right.

13 Q. And your testimony is, you're saying you weren't aware  
14 that that premium was ever going to change?

15 A. No, I didn't think it was ever going to change. I  
16 figured if I had to pay 30 years of payments, and it  
17 was going to cost me 30 grand over 30 years for that  
18 sort of a return, I thought that was a good business  
19 investment.

20 Q. Did you ever ask anybody for a copy of the policy at  
21 any time before Mr. Lupilloff's death?

22 A. I don't believe so, no.

23 Q. And the first time you ever saw the policy would have  
24 been after Mr. Lupilloff's death, right?

25 A. That's correct.

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1 MR. BREDELL: Off the record.  
 2 (Off the record at 4:47 p.m.)  
 3 (Back on the record at 4:51 p.m.)  
 4 MARKED FOR IDENTIFICATION:  
 5 DEPOSITION EXHIBIT 9  
 6 4:51 p.m.  
 7 BY MR. SCHMIDT:  
 8 Q. Sir, I'll hand you what has been marked as Exhibit 9.  
 9 That's a promissory note for \$6,000 of 7-17-07?  
 10 A. Yes.  
 11 Q. And you are loaning \$6,000 to MAD Advertising, Gary  
 12 Harmon?  
 13 A. Yes.  
 14 Q. We talked about this briefly before, this is the loan  
 15 you're making to Harmon. This is after he's told you  
 16 he's not going to pay for the policy anymore?  
 17 A. Yeah, I believe it is.  
 18 Q. Okay. So when I asked you about it before, I didn't  
 19 ask you about it in that timeframe, I just asked you a  
 20 question about whether you had proof he paid you or  
 21 you paid him and all of this.  
 22 But now my question is why are you loaning  
 23 him the \$6,000, now he owes you for this original  
 24 agreement that he's never paid you anything on, and  
 25 now he's told you he's not paying for the life

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1 insurance policy anymore, so why are you going to loan  
 2 him another 6,000 bucks?  
 3 A. The same answer. I was trying to help Gary.  
 4 Q. Help him what?  
 5 A. With his business. He said he needed some money to  
 6 continue his business.  
 7 Q. And how does that help you?  
 8 A. Well, he paid me back.  
 9 Q. Pardon me?  
 10 A. He paid me back.  
 11 Q. You loaning him \$6,000 to help his business, how does  
 12 that benefit you as a businessman?  
 13 A. Well, when I spoke with Gary, Gary was hoping to be  
 14 selling his company, and he needed the money to keep  
 15 his company going, because if he couldn't pay his  
 16 salespeople, or whatever he needed the money for, his  
 17 business would go under and he wouldn't be able to  
 18 sell the company, which means he couldn't pay me back  
 19 the principal.  
 20 Q. That's the same excuse he gave you four years earlier  
 21 in 2003 for the 2,500 bucks, that he was going to try  
 22 to sell his business, though. Isn't it the same  
 23 excuse?  
 24 A. Mr. Schmidt, I don't know if excuse is the word.  
 25 Q. Reason, the same reason he gave you?

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1 A. Yep.  
 2 Q. And you accepted it?  
 3 A. I did.  
 4 Q. Even though he's not followed through any promise to  
 5 date with you?  
 6 A. He's paid me back some of the small loan I gave him  
 7 and then he paid me back this one that I gave him.  
 8 Q. But you've got no proof of that.  
 9 A. No.  
 10 MARKED FOR IDENTIFICATION:  
 11 DEPOSITION EXHIBIT 10  
 12 4:55 p.m.  
 13 BY MR. SCHMIDT:  
 14 Q. Do you recall any discussion you had with  
 15 Mr. Lupilloff, that the reason – that you were going  
 16 to submit a Bad Check Crime Report when he sent you  
 17 that \$20,000 NSF check way back in April of '03, and  
 18 that after that is when – your discussion about the  
 19 life insurance policy, in which case you wouldn't file  
 20 a crime report for that NSF check; do you remember any  
 21 discussion about that?  
 22 A. I think you have to ask me that question again.  
 23 Q. Back in '03 –  
 24 A. Yes.  
 25 Q. – for your initial deal, Exhibit 1, I asked you a

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1 couple of hours ago, you said that Lupilloff gave you a  
 2 check for 20,000 bucks as a payment on that, right?  
 3 A. Yes.  
 4 Q. And then you told me that that check came up NSF, no  
 5 sufficient funds, correct, bad check?  
 6 A. Yes.  
 7 Q. Do you recall a discussion, at any time thereafter,  
 8 that if Lupilloff got the insurance policy you wouldn't  
 9 proceed to have criminal charges brought against him  
 10 for the NSF check?  
 11 A. No, that was never said.  
 12 Q. You had no discussion about that?  
 13 A. No. No.  
 14 Q. I'll show you Exhibit 10. This is a report from bad  
 15 check, it's dated 2-6-08. It's for this April 9, '03  
 16 \$20,000 check signed by you.  
 17 Do you recall that?  
 18 A. I have a recollection of it, yes.  
 19 Q. Do you want to take a look at that for a second and  
 20 refresh your memory?  
 21 A. I remember filling out these documents, yes.  
 22 Q. And why did you – and the date of that, excuse me, is  
 23 2-6-08.  
 24 So why on 2-6-08 are you filing this  
 25 criminal report for a bad check that's way back from

1 five years earlier, 4-9-03?

2 A. If I remember right, I was mailed documents from the

3 court, I don't know what court, that Gary was

4 declaring bankruptcy. And I believe an attorney that

5 I knew suggested that for me to be on the list of

6 creditors, that I should have as much documentation as

7 possible in case there was ever a time that I could

8 collect from Gary. So the attorney suggested that I

9 put in a report with regard to the check.

10 Q. Some attorney told you that?

11 A. I think so. I think so.

12 Q. So that's not to get a record in bankruptcy, it's more

13 or less to show a record about this bad check

14 transaction; is that what it's for?

15 You already had a record of this agreement

16 with him, Exhibit 1, right?

17 A. Correct.

18 Q. So why are you doing it? You already got Exhibit 1,

19 which is the full amount, why are you doing this

20 criminal report for Exhibit 10?

21 A. I think I did this, like I mentioned, I don't remember

22 who mentioned that I should do this, but I'm going to

23 repeat my answer, I got a letter from the court saying

24 Gary was declaring bankruptcy, that I was a list of --

25 I was one of a number of people that Gary owed money

1 to and that I should do a Bad Check Crime Report just

2 to add to it.

3 Q. That letter you never produced, do you still have that

4 letter from the bank report?

5 A. No, I don't think I do.

6 MARKED FOR IDENTIFICATION:

7 DEPOSITION EXHIBIT 11

8 4:59 p.m.

9 BY MR. SCHMIDT:

10 Q. Sir, I'm going to hand you Exhibit 11. That's a

11 letter of 8-31-08 from Nationwide to you, referring to

12 the life insurance policy, and it says, "We are

13 concerned because you are rapidly approaching a very

14 important policy anniversary. This is your final

15 opportunity to convert this policy to a policy that

16 builds cash value. The term life policy contract

17 gives you the option to convert this temporary term

18 policy to a permanent whole life policy with no

19 medical requirements.

20 One of the benefits of converting this

21 policy is the ability to build cash value. Your

22 current policy does not build cash value. Please act

23 quickly, because the conversion privilege will end 30

24 days after the policy anniversary listed at the top of

25 this letter," which is listed as 11-28-08.

1 Do you recall getting this letter?

2 A. I don't.

3 Q. Do you recall this issue at all?

4 A. I beg your pardon?

5 Q. Do you recall this discussion at all --

6 A. No.

7 Q. -- that the anniversary is coming up and you've got to

8 convert it to a cash value now if you want to?

9 A. No.

10 Q. If you had this letter, if you read this letter back

11 in November of '08, would you have made any different

12 decision with the policy? I'm sorry, with the letter

13 in August of '08, would you have made any different

14 decision about the policy?

15 A. No, I wouldn't have. No, I don't think I would have

16 understood exactly what this meant and I would have

17 thrown it in the circular file.

18 Q. Do you recall making any contacts with the Nationwide

19 agent, Betsy Reich, to discuss whether Lupiloff was

20 paying the premiums during the time that -- before the

21 time that you became the owner and payor of the

22 premiums?

23 A. I remember giving Betsy a call when Gary was the

24 owner.

25 Q. Do you recall how often you were calling her?

1 A. I probably gave her a call every six months to a year,

2 I think.

3 Q. Okay. Why were you doing that?

4 A. Well, Gary had already asked me once or twice to pay

5 his insurance premium, so I thought I would call Betsy

6 every six or seven months to see if I needed to come

7 in and pay Gary's premium or not. But Betsy didn't

8 tell me anything.

9 Q. When you asked her if he had paid, would she tell you

10 yes or no?

11 A. No. No. She wouldn't.

12 Q. She would tell you that she wasn't allow to tell you?

13 A. Correct.

14 Q. So if you called her once, and she says I can't tell

15 you, why would you keep calling her?

16 A. I actually don't really have a good answer. I just

17 called her, and maybe I was thinking that if Gary

18 wasn't paying the premiums that she might contact him

19 and say, well, Gary, you're late, or something like

20 that.

21 Q. Do you recall calling Betsy Reich, before Lupiloff's

22 death, and asking her if she knew if he had any other

23 life insurance policies?

24 A. No, I don't think I ever asked Betsy that before.

25 Q. She testified at her dep that you called her before

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1 Lupiloff was killed and asked her if she was aware if  
 2 Lupiloff had any other life insurance policies. You  
 3 don't recall that happening?  
 4 A. No, I don't recall that at all.  
 5 Q. You, after Lupiloff's death, you recall you made a  
 6 beneficiary claim for the benefits of the policy?  
 7 A. I do remember.  
 8 MARKED FOR IDENTIFICATION:  
 9 DEPOSITION EXHIBIT 12  
 10 5:05 p.m.  
 11 BY MR. SCHMIDT:  
 12 Q. Do you recall when you first contacted anybody from  
 13 Nationwide after Lupiloff's death about recovering  
 14 under the policy?  
 15 A. Yes.  
 16 Q. When did you first call?  
 17 A. I believe I called Betsy Thursday morning.  
 18 Q. So he died Tuesday, and how did you find out?  
 19 A. I saw it on the news.  
 20 Q. And which date did you see it on the news?  
 21 A. I think it was Wednesday night.  
 22 Q. So your understanding was that it happened on Tuesday,  
 23 his death happened on Tuesday?  
 24 A. Yes.  
 25 Q. But it wasn't on the news until Wednesday night? Are

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1 you sure about that or are you not sure?  
 2 A. I am sure.  
 3 Q. That you first saw it on Wednesday night.  
 4 A. Yeah. That's when they released his name.  
 5 Q. So you called Betsy on Thursday?  
 6 A. Yes.  
 7 Q. And what did you ask her or tell her, or whatever?  
 8 A. I asked her had she heard that Gary got shot.  
 9 Q. And then what?  
 10 A. I believe she said she did.  
 11 Q. And then what?  
 12 A. And I think we consoled one another. And then she  
 13 said that I should call up the Nationwide agent who's  
 14 handling her accounts, that she's no longer with  
 15 Nationwide.  
 16 Q. She told you to call the new agent?  
 17 A. Correct.  
 18 Q. And you did so?  
 19 A. I did.  
 20 Q. And then you followed up to Exhibit 12, is a  
 21 beneficiary claim form. Is that what you filled out?  
 22 A. Yes.  
 23 Q. And you asked for a lump-sum payment by a check?  
 24 A. I did.  
 25 Q. And that's your signature on Page 0285?

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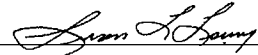
1 A. That is.  
 2 Q. That's dated 7-15-2010?  
 3 A. That's the date that's on there, yes.  
 4 Q. So that would have been two days after his death?  
 5 A. Was he killed in July or June?  
 6 Q. July.  
 7 A. July. Yes, so I got that on Thursday.  
 8 Q. So you got it and sent it in on the same day.  
 9 A. I don't remember what day I sent it in.  
 10 Q. Well, it's signed by you.  
 11 A. It's signed, that's when I got it, but I don't know if  
 12 I mailed it in. I believe I may have mailed it in  
 13 seven months later.  
 14 Q. You think you mailed it seven months later?  
 15 A. I think so. I don't remember.  
 16 Q. Why do you think you did?  
 17 A. I think my attorney at the time told me when I should  
 18 apply for the proceeds to the life insurance policy.  
 19 Q. Do you have any proof of when you sent it in?  
 20 A. No. I was looking on this document to see if it had  
 21 some fax or timestamp on it, but I don't see one. So  
 22 I'm not exactly sure when I mailed it in. That's when  
 23 I filled it out, because that's when I got it.  
 24 MARKED FOR IDENTIFICATION:  
 25 DEPOSITION EXHIBIT 13

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1 5:09 p.m.  
 2 BY MR. SCHMIDT:  
 3 Q. I'll hand you, sir, Exhibit 13. That's an E-mail from  
 4 you to Abby T-E-D-E-S-C-H-I of Nationwide of 2-14-11.  
 5 Do you recall that?  
 6 A. I'll have to read it.  
 7 Q. All right.  
 8 (Off the record at 5:10 p.m.)  
 9 (The deposition was adjourned at 5:10 p.m.)  
 10 Signature of the witness was not requested by  
 11 counsel for the respective parties hereto.)  
 12  
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 25

1 CERTIFICATE  
2 STATE OF MICHIGAN  
3 COUNTY OF MACOMB  
4

5 I, SUSAN LOWRY, a Notary Public in and for  
6 the above county and state, do hereby certify that  
7 this deposition was taken before me at the time and  
8 place hereinbefore set forth; that the witness was by  
9 me first duly sworn to testify to the truth; that this  
10 is a true, full and correct transcript of my  
11 stenographic notes so taken; and that I am not  
12 related, nor of counsel to either party, nor  
13 interested in the event of this cause.  
14  
15  
16  
17  
18  
19

20   
21 SUSAN LOWRY, CSR-2636



22 Notary Public  
23 Macomb County, Michigan  
24 My commission expires December 3, 2016  
25